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ABSTRACT

This document presents the transcript of a hearing before the House Subcommittee on Education Reform concerning reforming the Individuals with Disabilities Education Act (IDEA). Highlights of the testimony include: (1) adding accountability measures to IDEA; (2) providing procedural relief without reducing protections for students with disabilities; (3) moving toward fulfilling Congress' commitment to provide 40% of excess costs; (4) monitoring and enforcement; and (5) training of teachers and related personnel. Statements are included of Representative Michael Castle, Subcommittee Chairman; Representative Dale Kildee, Ranking Minority Member; W. Douglas Tynan, a clinic director; Patrick Wolf, a professor of public policy; Gregory Lock of the National Association of Elementary School Principals; Katherine Beh Neas of the Citizens with Disabilities Education Task Force; and Leslie Seid Margolis, an attorney with the Disability Law Center. Appendices include written statements by the presenters and additional documents provided for the record. (DB)

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RETHINKING SPECIAL EDUCATION: HOW TO REFORM THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON EDUCATION REFORM

OF THE

COMMITTEE ON EDUCATION AND
THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, MAY 2, 2002

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HEARING ON RETHINKING SPECIAL EDUCATION:
HOW TO REFORM THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Thursday, May 2, 2002

Subcommittee on Education Reform

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:40 a.m., in Room 2175, Rayburn House Office Building, Hon. Michael N. Castle, Chairman of the Subcommittee, presiding.

Present: Representatives Castle, Petri, Souder, Ehlers, Tancredo, Biggert, Platts, Keller, Osborne, Wilson, Kildee, Scott, Woolsey, Sanchez, Solis, Davis, Owens, Payne, and Roemer.

Staff present: Charles Hokanson, Professional Staff Member; Blake Hegeman, Legislative Assistant; Krisann Pearce, Deputy Director of Education and Human Resources Policy; Kate Gorton, Professional Staff Member; Heather Valentine, Press Secretary; Patrick Lyden, Professional Staff Member; and, Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Maggie McDow, Minority Legislative Associate/Education; Alex Nock, Minority Legislative Associate/Education; Joe Novotny, Minority Staff Assistant/Education; and Dan Rawlins, Minority Staff Assistant/Labor.

Chairman Castle. A quorum being present, the Subcommittee on Education Reform will come to order.

We are meeting today to hear testimony on how to reform the Individuals with Disabilities Education Act. Under Committee rule 12(b), opening statements are limited to the Chairman and the Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they may be included in the hearing record.

With that, I ask unanimous consent for the hearing record to remain open for 14 days to allow Member statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered.

I will proceed first with my opening statement.

OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE

First of all, let me say good morning to all the witnesses. We always appreciate you being here. We apologize for the slight delay as we finished up our welfare reform markup earlier today.

This is the second in a series of hearings that the Subcommittee on Education Reform will conduct on the reform and reauthorization of the Individuals with Disabilities Education Act (IDEA). Over the next few months, this Committee will explore ways of improving IDEA to ensure that no child, regardless of his or her challenges, is left behind as the President and the Congress continue their efforts to improve America's schools.

While the 1975 legislation was a major milestone in the effort to end the chronic exclusion and miseducation of disabled children, it is today a law that will challenge this Congress as we seek to provide new opportunities for all children. I believe we must build on the positive changes made in the 1997 reauthorization and allow this law to evolve. No longer is it simply enough to provide our disabled children access to public schools; now, more than ever, we must do more to see that disabled children are given access to an education that maximizes their unique abilities and provides them with the tools for later success.

It is my hope that these hearings will spur discussion and bring fresh thinking to our examination of IDEA. Some of these key issues include:

- focusing IDEA on the academic achievement of Special Education students;
- making the federal Special Education program more effective and adding accountability measures that mirror those envisioned by the No Child Left Behind Act;
- examining ways to provide procedural relief without reducing important protections for disabled students and their families;

- finding ways to attract and retain Special Education teachers; and doing more to help regular education teachers address the needs of the Special Education students in their classrooms;
- promoting early intervention, so that we can provide appropriate interventions and maximize the student's later academic success;
- identifying and eliminating the root causes of over identification, especially among minority children;
- ensuring school safety for all students;
- promoting non-adversarial resolutions when disputes arise between parents and teachers;
- increasing parental involvement in the education of their disabled child.

Today, this Subcommittee will explore at least several of these themes, including accountability and procedural requirements, and we are fortunate to welcome five witnesses who will speak from a number of perspectives, including a pediatric psychologist, an education researcher, an elementary school principal, a leader from the disability community, and a parent of a disabled child who has also worked as an attorney advocating for parents of Special Education students. With their help, it is my hope that Members will better understand these complex issues and inform our discussion on the reauthorization.

WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

Chairman Castle. In a moment, I will proceed with the introduction of our witnesses, but I will now yield to the distinguished Ranking Member of the Subcommittee, Mr. Kildee, for whatever opening statement he may wish to make.

Dale?

OPENING STATEMENT OF RANKING MEMBER DALE KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you very much. I am pleased to join Governor Castle at what is our second in a series of hearings on reauthorization of the Individuals with Disabilities Education Act, or IDEA. I have been working on Special Education for the 26 years I have been in Congress, and before that during my time in the Michigan legislature. In Michigan, I sponsored the enactment of Michigan's first Special Education law, prior to the federal enactment of IDEA during the 94th Congress. Today, we will receive very useful testimony on reauthorizing IDEA, and I look forward to hearing from the witnesses.

Prior to the passage of 94-142, the education of disabled children was ignored, prohibited, or outright denied. Instead of working to keep disabled children out, schools now seek to educate disabled children along with their non-disabled peers.

As reauthorization of IDEA gets underway, in this Congress some claim that IDEA is broken, that it needs to be completely overhauled and is too complex and difficult to implement. I believe that this really isn't correct. It is critical, I think, to remember that many of the problems we hear about regarding IDEA are largely implementation problems, rather than problems with the statute itself.

Certainly Congress will consider legislative changes to IDEA in this reauthorization cycle. However, we cannot and should not roll back protections for schools and disabled children alike simply for the sake of change. Schools have been implementing the 1997 amendments for only two years. To constantly subject schools, parents, and teachers to a complete overhaul of this law every five years makes it impossible to meet IDEA's requirements.

To implement this law effectively, school districts and schools need resources. For us here in Congress, that means honoring our commitment to fully fund IDEA by providing 40 percent of the excess cost of educating a child with a disability. And that goes beyond any authorizing language; that means the money must be appropriated, 40 percent of the added cost. And somehow we have to craft language, hopefully very, very, soon, so that 40 percent of added cost would not just be a promise but will really be something we have delivered.

Along with funding, we must ensure a stronger monitoring and enforcement system. We should build upon efforts in the 1997 amendments and consider Justice Department enforcement and other means to strengthen compliance with IDEA. Coupled with this federal focus is a need for states to upgrade their own monitoring and enforcement systems.

Lastly, children with disabilities only receive a high education if their teachers and related services personnel are well trained and knowledgeable. Too many of our regular education teachers do not have sufficient training to provide instruction to disabled children, including how to deal with behavioral problems. Too many of our Special Education teachers are leaving the field due to frustration, poor working conditions, too much paperwork, and inadequate pay. Our reauthorization should focus upon upgrading the quality of our teachers and related service personnel, including the conditions under which they work.

In closing, I want to thank the witnesses for appearing before the Committee today. I look forward to your testimony.

I thank you, Governor Castle.

Chairman Castle. Thank you, Mr. Kildee. We appreciate your opening statement.

We will now turn to the introduction of our witnesses. I am going to introduce all of you, which will take a moment, and then I am going to explain how we will proceed from there. And I will go from left to right, and your testimony will go from my left to your right.

So we will start with Dr. Douglas Tynan. Dr. Tynan is the Director of the Disruptive Behavior Clinic at the A.I. duPont Hospital for Children in Wilmington, Delaware, which I can personally testify is a wonderful entity. He also serves as a Clinical Associate Professor of Pediatrics at Thomas Jefferson University of Philadelphia. Prior to accepting his current positions, Dr. Tynan was on the faculty of George Washington University and Michigan State University. He holds a Ph.D. from the State University of New York, University Center at Binghamton.

Dr. Patrick Wolf is an Assistant Professor of Public Policy at Georgetown University's Public Policy Institute. He also serves as a faculty associate for the Program on Education Policy and Governance at Harvard University, as a member of the National Working Commission on Choice in K-12 Education, and is book review editor for the Journal of Public Administration Research and Theory. Dr. Wolf earned his Ph.D. from Harvard University in Government.

Mr. Gregory Lock has been the principal at Oak View Elementary School in Fairfax, Virginia, since 1991. Prior to that, he served as the principal at Centerville Elementary School and as an assistant principal at Kings Park Elementary School. Mr. Lock also has experience as a classroom teacher and has a Master of Education degree from Boston College.

Ms. Katherine Beh Neas is the Assistant Vice President of Government Relations for Easter Seals and co-Chair of the Consortium for Citizens with Disabilities (CCD) Education Task Force. Prior to joining Easter Seals, Ms. Neas was Associate Director of the American Association of University-Affiliated Programs for Persons with Developmental Disabilities, which might be the longest title of anybody here today. She holds a Bachelor of Science degree from Georgetown University.

And our final witness this morning will be Ms. Leslie Seid Margolis. Ms. Margolis is the parent of a child with a disability and managing attorney of the Schoolhouse Legal Services Project at the Maryland Disability Law Center. She has also served as a consultant and adjunct staff attorney for the National Association of Protection and Advocacy Systems. Ms. Margolis earned her law degree from Stanford Law School.

So we have a good, and obviously well educated, group of witnesses, and we are pleased to have them here. Before the witnesses begin their testimony, I would like to remind the Members that we will be asking questions of the witnesses after the complete panel has testified. In addition, Committee rule 2 imposes a five-minute limit on all questions.

That is also true of the witnesses. You have a little light system in those two little boxes on your table, if you were wondering what they were. For four minutes, I believe, it will be green. For one minute, it will be yellow. And hopefully, for no more than a few seconds, it will be red, at which point you should be trying to wrap up what you are saying.

I understand your desire to try to say everything, but the truth of the matter is that you will have a chance during the question-and-answer period to finish anything you thought you did not get out or whatever. And we already have your complete statements here for the record, in addition. So we try to stay as closely as we can, at least, within the time limits involved.

We shouldn't be too interrupted by the floor, but there may be occasions where we have to take a break in order to go over and cast votes on the floor. You will hear bells, and we will try to figure that out when it happens. But at this point, we will assume we can get through the hearing without that happening.

So with that, I think we are ready to commence. And we will start, as I said, with Dr. Tynan. We will work right across from Dr. Tynan, right through to Ms. Margolis, and then we will go to the questions and answers.

Dr. Tynan?

STATEMENT OF W. DOUGLAS TYNAN, Ph.D. DIRECTOR, ADHD AND DISRUPTIVE BEHAVIOR CLINIC, A.I. duPONT HOSPITAL FOR CHILDREN, WILMINGTON, DE

Good morning, Mr. Chairman and Members of the Committee. My name is Douglas Tynan; I am the Director of the ADHD and Disruptive Behavior Program at A.I. duPont Hospital for Children, and I am a pediatric psychologist. Our practice group evaluates over 500 children per year, most of whom receive services under the IDEA or 504 plan through public, private, and parochial schools in Delaware, Pennsylvania, New Jersey, and Maryland. And as such, we are uniquely positioned to see how the IDEA is implemented in a variety of school systems.

In my career path, I was a Special Educator at a private school in Boston when Massachusetts first implemented their Special Education law, Chapter 766, in 1974. And on a personal note, I have a nephew, now 30 years old, who was diagnosed with autism at age 3. He has benefited greatly from the IDEA programs that he attended in Suffolk County, New York, so I know full well how important this program is to families, including my own.

As has already been stated, IDEA has been largely successful in opening up educational opportunities for children with disabilities, who were denied such opportunities prior to 1973. Unfortunately, IDEA also has had some unintended negative consequences, which include the creation of incentives to define an ever-increasing percentage of school-age children as having disabilities, the redirection of financial resources from regular education to Special Education, and, for some children, application of what I consider an accommodation philosophy to populations that are better served by prevention or intervention strategies.

As required by IDEA, the Special Education system is predicated upon first classifying students into one or more federally defined categories. Once classified, they are provided Special Education services and accommodations. Those children who may not meet a specific school district's criteria for eligibility do not have to receive Special Education services, even though they were initially referred because they had academic difficulties. As a result of this process, two distinct classes of students emerge: those classified as disabled to receive services, and those who are having problems but not classified, who do not receive services.

Currently, more than ten percent of all children in public schools are in the Special Education system. Of these, approximately 90 percent have been classified in the areas of learning disability, speech and language delays, mild mental retardation or emotional disorders. These are the children who are usually included in mainstream classrooms for much of their day. The remaining ten percent of children in Special Education fall into categories reflecting a greater severity of disability, with more severe handicaps such as moderate to severe mental retardation, early infantile autism, sensory handicaps such as blindness or deafness, and severe physical and health impairments. These children are often, or usually identified far before school-entry age.

The first step in Special Education reform would be to recognize that the system currently serves several distinct populations: those with significant, severe mental disabilities, that comprise ten percent or fewer of all children; those with milder forms of neurological conditions, such as learning disabilities, attention deficit disorder, mild mental retardation; and a subgroup that has conduct and behavior problems.

The first group, children who are born with birth defects, serious sensory and physical disabilities, and significant cognitive delays, in the majority of these cases these children will have been identified as disabled in infancy and the preschool years, are identified by child-find programs, and have early intervention programs. We know who they are before they enter the school system, and frequently they are receiving services that are mediated by the public schools as early as the first year of life. To a large extent, we know their medical, rehabilitation, and educational needs, and they certainly need to continue with detailed individual education plans.

The second group, and by far currently the largest, is children who have what I would call milder forms of neurological dysfunction, which certainly impair their functioning. But the first question that needs to be addressed for this group, which includes children with ADHD and learning disabilities, is how special is the Special Education they receive? In many cases, the answer is not much, except for the fact that they are classified differently from their peers. Thus, rather than perpetuating the myth of these students receiving a different kind of instruction, we should reconstruct regular education to maintain them more effectively in the classroom by teaching reading with proven methods and teaching teachers how to manage behavior more effectively.

The last group is children with behavior problems that have been a problem under the IDEA discipline provisions. Students with these types of oppositional and conduct problems are often the result of some hearings regarding discipline actions. Effective treatment for these disorders would involve alternative schools that are set up to treat these children. I am not suggesting in any way that we exclude them from the program.

Thank you.

WRITTEN STATEMENT OF W. DOUGLAS TYNAN, Ph.D. DIRECTOR, ADHD AND DISRUPTIVE BEHAVIOR CLINIC, A.I. duPONT HOSPITAL FOR CHILDREN, WILMINGTON, DE – SEE APPENDIX B

Chairman Castle. Thank you, Dr. Tynan.

Dr. Wolf?

STATEMENT OF PATRICK J. WOLF, Ph.D., ASSISTANT PROFESSOR OF PUBLIC POLICY, GEORGETOWN PUBLIC POLICY INSTITUTE, GEORGETOWN UNIVERSITY, WASHINGTON, D.C.

Mr. Chairman and Members, I am pleased to speak to you today about how the Special Education system might be improved to better promote effectiveness and results-based accountability.

In 1997, you undertook an effort to revise the federal law governing Special Education in order to focus more strongly on whether or not the services being provided to students with disabilities are actually resulting in greater learning. The '97 amendments to the Individuals with Disabilities Education Act sought to replace a process-focused compliance-driven accountability system with a results-focused performance-driven alternative. This change represented movement in the right direction.

However, a central finding in our research is that the results-based accountability system under IDEA of '97 retains virtually all of the onerous procedural requirements of the previous system, yet omits components that are essential to holding implementers truly accountable for results. Special Education administrators continue to rely upon compliance with procedural rules as the yardstick for judging whether or not a local Special Education program is succeeding.

The current oversight system for Special Education falls short of achieving true results-based accountability, because it neither standardizes certain key requirements regarding the testing of students with disabilities, nor holds school systems accountable when they persistently fail to achieve results for such students. Undoubtedly, many Special Education teachers and administrators are making great strides with their students. However, these successes are happening largely in spite of, not because of, the accountability system that is in place.

A more complete results-based accountability system in Special Education would have certain features. Every student's individualized education program would describe the tests that are appropriate to measure the student's educational progress and any accommodations that should be made to the testing conditions based on the student's disability. The tests and accommodations for each student would be applied consistently, year after year, for all students with non-degenerative disabilities.

The process would begin with a set of baseline tests to measure initial levels of ability and achievement. Subsequent results would be reported in terms of gains or losses from that baseline. Reports also would include narrative from the teachers and aides who are educating the student, in order to place the gains or losses in context. Evidence of aggregate declines in the performance of the Special Education students in a given district would lead to a state-led intervention involving greater resources and supervised programmatic changes, and persistent performance declines would provoke tough sanctions, including the transfer of students to neighboring school districts, charter schools, or private schools at district expense.

Two elements of this proposal stand out. First, using gain scores is critical. Special Education students are, well, special. They exhibit various handicapping conditions of varied severity that more or less limit their educational ability and achievement. By using the metric of student-specific educational gains instead of an arbitrary standard of attainment to evaluate Special Education students, the system would automatically control for a number of pre-existing conditions that are particular to each student. The use of gain scores also minimizes the incentives for classifying a non-disabled student as disabled, since they measure individual progress instead of lowering the achievement bar.

Second, greater customer choice is likely to enhance accountability in Special Education. Experimental customer choice programs such as public housing vouchers have demonstrated that choice initiates a flight to quality. The observed behavior of customers who have choices provides important feedback to decision-makers, helping them invest more money and effort in what works and waste fewer resources on what fails. The power of parents to move their disabled child out of a program that is failing and into a more promising alternative improves the educational prospects for that child, and motivates more teachers and administrators to achieve positive results for their students with disabilities.

Mr. Chairman, you will notice that several elements of my proposal for Special Education are modeled after the "Leave No Child Behind" reforms. That is no coincidence. It would be a shame if students with disabilities were left behind as the new federal results-based accountability system drives the students in regular education programs to higher levels of achievement.

I urge you to give students with disabilities the opportunity to demonstrate their progress towards reasonable educational goals. If, instead, we expect little of them, then, unfortunately, we are likely to have our limited expectations fulfilled.

Thank you, Mr. Chairman, and I would ask that the two book chapters that inform this testimony be entered into the record.

WRITTEN STATEMENT OF PATRICK J. WOLF, Ph.D., ASSISTANT PROFESSOR OF PUBLIC POLICY, GEORGETOWN PUBLIC POLICY INSTITUTE, GEORGETOWN UNIVERSITY, WASHINGTON, D.C.

SEE APPENDIX C

Chairman Castle. Thank you. Without objection, the material you have referenced will be added to the record, and we appreciate it, Dr. Wolf.

Mr. Lock?

STATEMENT OF GREGORY LOCK, PRINCIPAL, OAK VIEW ELEMENTARY SCHOOL, FAIRFAX, VA, TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP), ALEXANDRIA, VA

Good morning, Chairman Castle and Members of the Subcommittee. It is an honor to come before you today representing the National Association of Elementary School Principals as you deliberate possible changes when reauthorizing the Individuals with Disabilities Education Act.

This morning, I will address the critical issue of paperwork and the time spent by educators in meeting the federal requirements to document the process, from the initial teacher referral of a student to the final written individualized education plan.

Unfortunately for a special class of teachers, time has been eroded by paperwork requirements that increasingly take teachers away from the clients they serve, the children whose special needs require more, not less, instructional contact time. One of the most valuable things you could accomplish in legislating changes to IDEA would be to reduce the administrative burden now carried by our school staff so they can spend more time in direct instruction.

While recognizing the unique situation that exists in each state and district, I feel that the experiences of educators at my school can provide some insights into the impact that IDEA has on the time demands on a school's resources. With a student population of more than 715, with a 29 percent minority representation, in a predominantly upper middle-class community, we are currently staffed with five full-time learning disabilities teachers, two teachers for children with emotional disabilities, a speech and language clinician, and four Special Education instructional assistants. Our student population includes 102 students receiving some Special Education services. Furthermore, to enhance inclusion, we will be adding another teacher and instructional assistant.

Itinerant teachers also serve students who need physical and/or occupational therapy. Finally, to assist one hard-of-hearing student, a full-time sign language interpreter is assigned to our building. Thus, the total of current full-time Special Education staff is eight, with six support staff and two part-time itinerant teachers.

This staffing is an example of the commitment that my school district has made to the 22,000 Special Education children and parents in our community. We have a well-trained cadre of over 2,000 Special Education teachers who work collaboratively in meeting the needs of students, many of whom receive support from more than one Special Education teacher.

For us, the frustrations in trying to provide services to students as required by their IEPs arise when paperwork requirements compete with the available instructional time. Attached in my testimony is a chart that describes the time each professional spends on a student who qualifies for services under IDEA from teacher referral to IEP. The 83.5 hours represent the average minimum requirement for each student. This time drain has a negative impact on the teacher and ultimately the student, two of our most valuable resources.

The cost associated with the 83.5-hour average is also significant. Based on an average salary of $60,000 per year for professional staff, the per-student cost of the initial process of identification through the development of the first IEP is nearly $4,000 per student. Multiplied by the 22,000 Special Education students in Fairfax County, the total average per-student cost of identification through the initial IEP, before any actual special services have begun, is more than $86 million.

From my desk at Oak View, I do not have the broad picture of IDEA's impact on public education across the country. But I do believe the facts of Fairfax County can inform the debate. I have brought those compulsory documents that are regularly used for the majority of meetings held at Oak View to identify needs and prescribe services under IDEA, as well as an actual IEP. I'm also submitting excerpts from a budget document prepared by the Fairfax County Public Schools that will help define the many levels and expenses of Special Education services provided by my school system.

The immediate impact of reduced paperwork requirements for educators will be increased instructional contact with children. As a principal, I request that you consider the following nine recommendations:

1. Reduce the number of required times during the school year when the procedural safeguards are distributed and explained. The document we provide to parents in Fairfax County is 15 pages long.
2. Provide a list of all the documents that are required for identifying and serving each Special Education student. That would help reduce the chances of states requiring unnecessary documents.
3. Standardize sections of the IEP to reduce the time needed before students moving between districts or states can be served.
4. Provide funding for technology to automate the written components of the IEP process.
5. Allow for the same classroom accommodations to be used for all regular state and county assessments, eliminating the need for additional paperwork or meetings when new assessments are added.

6. Consider simplifying the process of amending the IEP during its one-year term, and make the amendment process part of the regular communication between teacher and parent.

7. When possible, tie the IEP goals to the annual assessments required under the Leave No Child Behind Act, eliminating the short-term objectives that impose a heavy time requirement on the teacher.

8. Consider reducing the time classroom teachers are required to participate in IEP meetings. When classroom coverage for both the Special Education and general education teachers is needed, resources must be taken from other parts of the instructional program.

9. And finally, consider lengthening the time frame of the IEP, retaining the formal process for a child's major transition points. This new approach would allow for a more collaborative process for ongoing review of the student's progress.

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to present the principals' viewpoint on this very important topic. It would be my pleasure and that of NAESP to provide any additional information you desire. We look forward to working with you and other federal legislators on the gamut of issues associated with the reauthorization of IDEA.

WRITTEN STATEMENT OF GREGORY LOCK, PRINCIPAL, OAK VIEW ELEMENTARY SCHOOL, FAIRFAX, VA, TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP), ALEXANDRIA, VA – SEE APPENDIX D

Chairman Castle. Mr. Lock, I believe I have in my hand all the documents that you referenced in terms of what you deal with. And we will submit these for the record en bloc as a whole. I think each Member has them on their desk, if they wish to examine them. And we thank you for your testimony.

Ms. Neas?

STATEMENT OF KATHERINE BEH NEAS, ASSISTANT VICE PRESIDENT, GOVERNMENT RELATIONS, EASTER SEALS, AND CO-CHAIR, TESTIFYING ON BEHALF OF, CONSORTIUM FOR CITIZENS WITH DISABILITIES EDUCATION TASK FORCE, WASHINGTON, D.C.

Good morning, Mr. Chairman. My name is Katherine Beh Neas, and I speak to you today as one of the four co-Chairs of the Consortium for Citizens with Disabilities Education Task Force. I am also Assistant Vice President for Government Relations for Easter Seals.

The Consortium for Citizens with Disabilities is a coalition of nearly 100 national organizations representing consumers, advocates, providers, and professional organizations, and we are headquartered here in Washington. We advocate on behalf of all people with disabilities, of all ages and all types of disabilities and their families. And I appreciate very much the opportunity to be with you today.

I bring you greetings from one of my friends, Claire Huckel, who is a teacher at the Easter Seals preschool program in Bucks County, Pennsylvania. You have a picture of Claire with one of her students. When Claire was an infant in the early 1970s, her doctor told her family she would probably never feed herself, and might be best placed in a home for children with disabilities.

Her family accepted the diagnosis, but not the prognosis. When Claire was 3, she began attending the Easter Seals preschool, where she received Special Education and related services. According to her father, she grew stronger and learned to walk with confidence. At age 6, she was ready to enter first grade, and her parents enrolled her in elementary school. Claire was the only child with a disability in her class.

Claire was a pioneer, one of the few young people with disabilities in her elementary, junior high, and high schools. As Claire says, "It wasn't always easy. My mom and I had to work with each school and many teachers to explain my disability and help them adapt to my need for accessibility." Claire graduated with honors from high school and college, earning a teaching degree and then a master's degree in Special Education. Claire now works at the Easter Seals program she attended as a child. "It was my dream," she said, "to help children like I was. And the best part is that my teacher is still there and now is my colleague."

IDEA is a good law that has literally transformed the lives of children with disabilities and their families. Over the last 26 years, millions of children with disabilities like Claire have received appropriate early intervention, preschool and Special Education, and related services thanks to IDEA. The success of IDEA is also evidenced by the following accomplishments.

The number of children with developmental disabilities who must live in state institutions away from their families has been dramatically reduced. More young children are entering school ready to learn. More students with disabilities participate in state and district-wide assessments. Effective practices are implemented in schools across the country. More students with disabilities are completing high school. And more people with disabilities who want to work are working.

Congress significantly reformed IDEA in 1997. For the first time, children with disabilities are required to have access to the general curriculum. The vast majority of students with disabilities are expected to participate in state and district-wide assessments. These two requirements will go a long way to raise expectations for the educational outcomes of students with disabilities. It is important to note that we are ending the second full school year during which the

1997 reforms have been available to be implemented in our nation's schools.

The No Child Left Behind Act makes many new and necessary reforms to our public education system, of which Special Education is a part. The new law requires states to establish a single statewide accountability system. States must define adequate yearly progress, to include annual statewide measurable objectives for improving achievement for all students, including students with disabilities. CCD remains hopeful that student education achievement will continue to rise as more schools effectively implement IDEA and the No Child Left Behind Act. We urge the Committee to give states the opportunity to implement these existing requirements.

While there are many schools across the country in which children with disabilities are well educated, implementation of IDEA is uneven. Shortages of qualified personnel are critical and persistent. Funding for the three state grant programs and the discretionary grant programs have never been adequate. IDEA, as reformed in the 1997 amendments, and when fully implemented and enforced, provides states and local school systems a framework to improve educational outcomes for students with disabilities.

Our system of public education is responsible for educating all students, including students with disabilities. Only when Special Education and general education work together can we be confident that no child will be left behind. To this end, the Committee should build on the policies set forth in H.R. 1 and require that all Special Education teachers and other education personnel are qualified and certified by 2005. Research has demonstrated that the most significant factor of student achievement is the quality of the education personnel.

In addition, all IDEA programs, the Part C early intervention program, the Section 619 preschool program, Part B, the discretionary programs of Part D, must be fully funded. All Part B funds must remain in education. Many of our task force members are advocating for indexing Part D funding at 10 percent of Part B funding. Many of our task force members also believe that tens of thousands of young children with disabilities who could benefit from Part C early intervention programs are not being served.

And finally, Mr. Chairman, the task force understands that the Committee is committed to increasing educational outcomes for students with disabilities served by IDEA. In reauthorizing the law, the task force urges the Committee to analyze carefully each issue of concern to determine whether the concern results from a problem with the current statute or a problem of inappropriate, ineffective, or incomplete implementation of the current statute. Such an analysis should give you the determination of whether changes are required to enhance implementation of the current law, or whether requirements of the statute need to be changed.

We have provided a set of guiding principles to assist you in your review of this, and thank you for the opportunity to be here today.

WRITTEN STATEMENT OF KATHERINE BEH NEAS, ASSISTANT VICE PRESIDENT, GOVERNMENT RELATIONS, EASTER SEALS, AND CO-

CHAIR, TESTIFYING ON BEHALF OF, CONSORTIUM FOR CITIZENS WITH DISABILITIES EDUCATION TASK FORCE, WASHINGTON, D.C.
SEE APPENDIX E

Chairman Castle. Thank you, Ms. Neas, for your testimony. We look forward to having further discussions with you in a few minutes.

And Ms. Margolis will be our clean-up hitter.

STATEMENT OF LESLIE SEID MARGOLIS, PARENT, AND ATTORNEY, MARYLAND DISABILITY LAW CENTER (MDLC), BALTIMORE, MD

Good morning, Mr. Chairman and Members of the Subcommittee. My name is Leslie Seid Margolis, and I am the parent of a nearly eight-year-old child with lissencephaly, a rare genetic brain development disorder that results in significant physical and cognitive disabilities. Despite the severity of my daughter Pazya's disabilities, she currently is fully included in a regular first grade class in a Baltimore City public school.

I appreciate the opportunity to testify today regarding the IDEA. My perspective is based not only on my experiences as a parent of a child who benefits tremendously from the IDEA, but also in my professional status as a managing attorney at the Maryland Disability Law Center, Maryland's protection and advocacy agency, where I have worked on Special Education issues since 1985.

As a parent, and as somebody who has spent a good deal of time thinking about the IDEA professionally, I want to make several points today. First, the IDEA is an essential statute. It is not a law that needs to be dismantled or amended beyond recognition. It is, rather, a statute that needs to be fully implemented. Second, effective implementation of the IDEA depends on meaningful monitoring and enforcement by the Office of Special Education Programs, by states, and by local school systems.

Let me expand on these points. More than 25 years after enactment of the IDEA, we still struggle to ensure that it is implemented at all, let alone effectively, for students in every school district in the country. In attempting to answer the question of why this is so, many people erroneously conclude that there's a problem with the statute itself. In fact, however, much of the lack of implementation of the IDEA is attributable to inadequate monitoring and enforcement at the state level, and to a federal monitoring system that sweeps too broadly, focuses too much on procedures and too little on substance, fails to produce timely monitoring reports, and engages in enforcement action only rarely and inconsistently.

The problems with federal monitoring have been persistent and pervasive enough that several years ago a number of advocates, later joined by state Special Ed directors, OSEP staff, and others, worked together to develop a focused monitoring and enforcement framework that, if implemented, could affect significant change. The current draft of that proposal is attached to my testimony.

As we have conceptualized focused monitoring, a broad group of people would identify a few significant priorities, those aspects of the IDEA that, if implemented, would truly make a difference for students with disabilities. And it is those priorities that would then be monitored using a data based and verifiable system with provision of supports and capacity building to school systems, and when necessary, a utilization of sanctions.

I am concerned that OSEP may lack the ability or the will to make this system real. I understand that OSEP must function in a world that is full of political pressure and fraught with the tension that comes from the need to have a cooperative relationship with the very agencies for which OSEP is charged with oversight responsibilities. However, OSEP must use its enforcement authority.

The answer to lack of implementation of the IDEA is not dismemberment of the IDEA. It is, rather, enforcement. It is unconscionable to acknowledge, as OSERS' previous assistant secretary did, that parents have been the primary enforcers of the IDEA, and then fail to act to change that situation. Parents rightfully have, and must retain, the ability to participate in the decisions that affect their children's education and to challenge those decisions when they wish to do so. But parents should not be responsible for the enforcement role that rightfully belongs to the Department of Education, to states, and to local school systems.

I know that several options are being considered to address IDEA enforcement issues, such as transferring enforcement responsibility to the Department of Justice or to the Office of Civil Rights. While there is certainly a role for the Department of Justice in enforcement, I do not believe that wholesale transfer for either of these options would effectively ensure implementation of the IDEA.

What is needed, I think, is a clear directive from Congress to the Department of Education that the Department of Education use the enforcement authority it already has. Perhaps this would happen if the same staff at OSEP did not have responsibility both for technical assistance and for enforcement. Or perhaps consideration should be given to creation of an Office of the Inspector General for IDEA enforcement purposes.

I do believe that if OSEP adopted a true focused monitoring system, enforcement responsibility would be easier to exercise, because the parameters of OSEP intervention would be clearly defined and because all decisions would be based on verifiable data.

My daughter is one of the children for whom the IDEA was enacted. I have no doubt that if she had been born 25 years earlier, the doors to the schoolhouse would have been slammed firmly in her face. Instead, thanks to the IDEA, she has had the opportunity to attend preschool, kindergarten, and first grade with children who do not have disabilities, children who have exhibited gentleness and enthusiasm with her, and children who consider her their friend. She in turn has had the benefit of specialized services and a stimulating environment with children who make her happy.

I devoted my professional life to the IDEA for many years before I became a parent. My commitment to ensuring the fulfillment of the promise of the IDEA has only increased since I became a parent. I urge the Members of this Committee to promote effective monitoring and enforcement of the IDEA rather than promoting changes to the IDEA itself.

Thank you for the opportunity to testify.

WRITTEN STATEMENT OF LESLIE SEID MARGOLIS, PARENT, AND ATTORNEY, MARYLAND DISABILITY LAW CENTER (MDLC), BALTIMORE, MD - SEE APPENDIX F

Chairman Castle. Thank you, Ms. Margolis, and I would like to thank all the witnesses.

We will now turn to the Members for the question-and-answer period. Let me remind you that there are five of you and perhaps you will get asked half a question apiece; you probably can't all comment on everything that happens.

I will yield first to myself for five minutes. So let me just start by saying that I agree with what Ms. Neas said, that IDEA is a good law that has transformed students and families. I do not have a problem with that. But even when you have good laws, which have helped transform individuals and given them opportunity, there still could be aspects about them that could be better. And that is really what we are trying to deal with.

We hear, not just complaints, but have statistical evidence of concerns about paperwork, which we have heard about here today. The whole question of over identification, the whole legal component, and how that works, the expense of all this in various aspects, some of which is anecdotal, some of which is perhaps a little beyond anecdotal, needs to be explored. And these are the kinds of things I think we should be looking at. So that is what I am looking for.

With that, let me start with Dr. Tynan and ask you what specific reforms to IDEA will help the Special Education system empower students to overcome their learning disabilities by equipping them with coping and compensatory mechanisms? That is sort of a broad question. Perhaps you could answer it a little more succinctly than my question?

Dr. Tynan. Yes, thank you. I believe, in terms of children with learning disabilities, Dr. Reid Lyon at National Institute of Child Health and Development who hasn't testified yet before this Committee, has written extensively about the need for teaching reading effectively in the early grades, in other words early identification of children who are experiencing reading problems. We can identify children in first grade who are having a hard time with reading.

Under the current learning disabilities classification in the IDEA, that is a system that waits for the child to fail. They have to fall behind a certain amount, and their achievement scores have to fall either one standard deviation or 20 points below the IQ score before they would formally be classified. It varies from district to district. And I agree with Dr. Lyon's suggestion that we teach and identify children with reading problems early, and institute some compensatory reading strategies.

I know in the state of Iowa, they do not do the same sort of testing they do in most other states. I believe they have some type of waiver, and they really do work on the reading problems early, to identify the children early.

With children in the other category, the group I work with the most, children with attention deficit/hyperactivity disorder, I think training teachers in all areas of education, both regular and Special Education and behavior management, is essential. Teachers are not required to learn how to manage behavior effectively. It is not a requirement for teacher certification. So teacher certification is not going to help this issue.

Dr. George Sugai's positive behavioral intervention support program, which was a program funded by the Department of Education, is an excellent example. Brian Touchette, with the Delaware State Department of Education, heads a teacher training program. Currently I think it trains teachers in 12 school districts. I am currently doing a program where I am basically volunteering my time to do the same thing in the Catholic schools.

So, two steps to help that huge group of children with learning disabilities and ADHD, which overlap quite a bit, would be teaching teachers to manage behavior and doing a better job with reading.

Chairman Castle. Thank you, Dr. Tynan. Mr. Lock, I am going to ask you a question. You may not know the answer to this. If you don't, just tell us you don't.

You have submitted a lot of paperwork here. We always hear about paperwork, but we are happy to see it. Maybe you are not, but we were happy to see it in the Committee. But where does this paperwork burden come from? When you go to schools, they get a little confused about this, but does it come from federal law, federal regulations? Does it come from state law and/or regulations? Does it come from local district or local school requirements? Do you have any feel for that?

I mean, everyone, virtually everyone complains about it. Everyone complains about the IEPs and the amount of time, and the way they take away from the kids. But sometimes it becomes confusing to me as to whether it is coming from us here at the Federal Government or a more localized circumstance.

Mr. Lock. Well, Mr. Castle, being at the bottom of the food chain and having to implement the laws that have been made, and also in talking with our district Special Education administrators, my sense is that all of the paperwork that you have before you is required by federal regulations.

It is not clear to me, and I just don't have the background to be able to say that in my own state of Virginia, how much of the regulations are a part of what Virginia requires, and how much of that is derived from the Federal Government.

Chairman Castle. You have never actually analyzed it as to where it really comes from?

Mr. Lock. No, sir, I haven't.

Chairman Castle. You just know it is there.

Mr. Lock. I just know that in the book, I have to fill out the paper and I just go through it page by page.

Chairman Castle. Okay.

I actually wanted to ask questions of everyone, but I won't have a chance. But Ms. Neas, if I could ask this question. You sort of touched on this a little bit in your testimony. But what strategies do you recommend that we, the Subcommittee and the Full Committee, consider to ensure access to early intervention services for all eligible infants and toddlers with disabilities and their families?

I notice in your success story about your friend, you referred to the fact that help started at the age of 3. I happen to believe all that is very important as well, and I was wondering if you had any further thoughts on that?

Ms. Neas. I do. And one step you have already taken two weeks ago in the passage of the Keep Children Safe Act is the added provision that would require Child Protective Services to develop policies with the state early intervention programs, so that children that are part of the child abuse system are referred to determine whether or not they have a disability, whether or not they might be able to benefit from IDEA.

One of the reasons we wanted to see that change happen was many of these children don't live with their families. They might be with an aunt and uncle or a grandparent. And they may have no idea what system or services are out there, and so trying to help those families make connections with this is one step that I hope will happen by the end of this Congress.

The other thing is simply having enough resources at the state level. In some of the states we have been working with, the people who are responsible for finding children have many, many other responsibilities. And many of them don't have the training in child development to know when a child is at risk for developmental delay and who might benefit.

We are certainly doing a lot of work with health care centers, with Head Start programs, to try to find them, also at WIC offices and wherever you find children. We've actually even done screenings at Wal-Marts and Dollar General stores, places where young children go, to try to get them information about these programs. Not everyone is eligible, but at least the families have the information. They can figure out if maybe this is something that might be helpful to them, and then take the steps necessary to determine if they are eligible.

Chairman Castle. Thank you very much, Ms. Neas, I appreciate it. Mr. Kildee?

Mr. Kildee. Thank you, Mr. Chairman. Mr. Lock, first of all, my three children attended schools in Fairfax County, a very good school system. They went there from first grade through 12th grade; that started about 26 years ago.

Let me ask you this question. You talked about paperwork, and we all worry about that. But in my own state, I can go from one school district to another and find a different IEP, for example, for two students with basically the same disability. One will have an IEP of 25 pages, and one will have an IEP of two pages. Both meet the federal standards. And I think I am joining in the Chairman's question trying to determine how much of this paperwork is generated by state education authorities (SEAs) or local education authorities (LEAs), and how much really is a federal requirement. You say those who report to you feel that they are basically federal requirements, yet my experience has been that very often it is the states that pile on the paperwork.

Mr. Lock. One of the issues that we have at the local school, and I face this a lot, is we have a tremendously mobile society in Fairfax County and this area, with a lot of students coming and going, transitioning.

Mr. Kildee. There is no school district, probably in the country, more mobile than Flint, Michigan.

Mr. Lock. Well, the problem that we face as students come and go is that we do see a lot of IEPs that come in that were written in other districts. It could be in Arlington or Falls Church, it could be Flint, Michigan. It becomes necessary for us at that point to take a look at the packet that we request from the previous school if the parent does deliver it to us and go through that document and pull out the information. Generally, we are looking for the information about the child's eligibility for whatever services that they were receiving. We look at the next component of the IEP, which would be the kinds of services, the amount of time being provided, and the different resources that that district had to provide the services.

And then we have to convene our own IEP, and rework it into what we are able to provide in Fairfax County based on the child's eligibility and all the testing that was done previously. Now, we don't have to go through the entire process, but one thing that would certainly help in the amount of time that it takes for us to provide continuous services to a child coming in is to have standardized parts of the IEP so that whether a child is coming from across a county line or coming from a different part of the country, there are those standardized pieces in place that we could incorporate into our own IEP, thereby speeding up the process.

The guidelines are really specific about the number of days that we have to complete the whole process, from referral all the way to IEP completion. And it is a fairly lengthy process. But also, one of the purposes of this Committee is to reduce the amount of paperwork that we go through; some kind of standardization in terms of what is required within a child's IEP, I think, would be very helpful.

Again, I wish I could answer that question, and perhaps receiving testimony from some of the states that take the federal guidelines and turn them into state rules would probably be beneficial to the Committee. I honestly don't know where that change would occur.

Mr. Kildee. And I didn't mean to diminish the mobility of Fairfax County, because I know my two sons and daughter went to school with students from about every state in the Union and many countries. So I know that is a fact there.

Ms. Neas, could you comment on where most of the paperwork is generated or demanded from this? Federal or state?

Ms. Neas. I am pleased to have that question, Mr. Kildee. I think, in looking at Mr. Lock's testimony, one of the things that I came away with was how much of that was the result of sound educational practice; I mean, of them doing what they should be doing. And IDEA requires an individualized program for each child, and that means that people have to figure out what that is. It isn't just if a child has a disability, that they are automatically going to have a certain set of needs.

And while I appreciate that there are only 24 hours in a day and that people are working hard, I think that some of the things in that paperwork are the result of sound educational practice to determine that kids are getting the services and supports that they need, and that their teachers are getting the services and supports that they need.

So I think there are two ways to look at this issue. One is, is it just paperwork? And I think all of our offices would demonstrate that we are all drowning in paperwork, and I think that is true in the education profession as well. But what is the difference between what you don't need and things that are really critical for sound educational performance?

Mr. Kildee. Mr. Chairman, I will probably come back to a second round of questions.

Chairman Castle. Thank you, Mr. Kildee.

I yield five minutes of time for questioning to Mr. Keller.

Mr. Keller. Thank you, Mr. Chairman. I have just a brief statement, and then I am going to ask a few questions about the paperwork issue.

I certainly don't pretend to be an expert on IDEA or Special Education, and so to educate myself a little bit, I decided to go into my district and teach two Special Education classes at two different schools. I taught classes at Lake Silver Elementary School, which is our main magnet school where special-needs children go, and Edgewater High School, our largest high school in Orlando, Florida, in the downtown area. And what I learned from that experience is there are essentially three problems, according to the teachers and administrators: paperwork, discipline, and the fact that we are paying to the tune of $110,000 per year for some students, whereas the average student only costs $5,500 per year.

Paperwork was the biggest and by far most complained-about issue. The teachers who I worked alongside of spent an average of two hours per day on paperwork, and then one day over the weekend. And it is not just IEPs, but just silly stuff. For example, they had to fill out paperwork saying we are proving that we are offering you this summer class and you have elected not to take it. Well, you and I know that if you were in high school and there was a calculus class, if you want it, you sign up for it. You don't have to fill out paperwork proving they have offered all these classes and you have declined them.

Also, those teachers, as Mr. Castle was saying, were confused. They didn't know if the paperwork was coming from the Federal Government, the state government, or the local school district. All they knew is they were spending their weekends doing paperwork, and they were spending a lot of time pushing a pencil when they should be teaching.

The other problem was discipline. And I asked, "What kind of discipline problems?" They said, the kids bring guns to school, and if they are special-needs, they can't expel the child. All they can do is suspend him for ten days. There was extreme pornographic and profane language used sometimes; they can't do anything more. And they felt that some of these children were purposefully being disrespectful to the children because they knew they could get away with it. And that was causing some resentment among the other children.

And then finally, as I mentioned, some parents are demanding the Rolls-Royce treatment for their children; round-the-clock nurses and a special van. And they are paying $110,000 for certain children, and mainly for fear of litigation.

So I want to address the paperwork issue, Mr. Chairman. One thing that has become apparent here from our witnesses is that we need some sort of study by the Department of Education to tell us what the burdens and regulations are that are causing all of these problems and all of this time. And maybe we should consider a wholesale repeal of these regulations and start again.

So let me begin with you, Dr. Wolf. If you had a magic wand, and your task was to reduce the paperwork to one hour a day during the planning period, what would you do if you were a Member of Congress?

Dr. Wolf. Thank you, Mr. Keller. Basically, I think my read on the paperwork problem is reflected in the comment you made about fear of litigation. I suspect that a lot of the paperwork that reaches the average Special Education teacher and administrator is a trickle-down result. I mean, you start with a series of requirements in IDEA '97, and states take a look at that, and maybe there is some ambiguity regarding them, and just to be on the safe side, to protect themselves against litigation, they formulate a long list of specific requirements that they place on the local school district. And then that whole process repeats itself.

I don't mean to dodge the question, but instead of focusing on a specific regulation, I would urge this Committee to seriously consider reducing the number of requirements in the legislation, and also, if possible, to increase their specificity, so that there isn't a lot of ambiguity that courts could interpret in different ways and that would encourage lawsuits. And hopefully that would result in the administrators lower down in the hierarchy being less concerned about the long list.

A good example is Baltimore, where litigation was required to actually get full implementation of the IDEA act. And when you combined the court-ordered paperwork requirements and procedures, with the response from local administrators, it resulted in 350 auditable standards that were placed upon local administrators. And they had to check the boxes on all 350 of those every time.

So I think a lot of the problem comes with the combination of the legal rights and the risk of litigation with a large number of requirements and some ambiguity regarding those requirements.

Mr. Keller. Thank you. I would love to have your other comments, but my time is up, so I will yield back, Mr. Chairman.

Chairman Castle. Before I yield to Mr. Scott, I am going to take the Chairman's prerogative to editorialize for a minute about the exchange that just took place.

I really do feel that somebody should be looking at the amount of paperwork, even this Committee or perhaps somebody beyond it, perhaps a broad group that would include lawyers and advocates and everybody else. And I do understand that when you are dealing with children with disabilities, I think you need an individual education plan. You are going to need probably more intensive paperwork than you would for the average student.

But having said that, I have heard this complaint so often, from so many people over the course of a couple decades now in government, that I believe there is some justification for the fact that we are spending the time of too many individuals and too many dollars on this. And some of it is probably as procedural as the dickens.

Now, I couldn't begin to tell you what is and what isn't, or where it comes from or where it doesn't. I don't have that knowledge. But the problem is, for us as a Committee, we don't have a good resource that we could go to, to really separate the wheat from the chaff and tell us what is right and what is wrong. And I would like to have that done. I am not asking questions. Mr. Scott will be asking the questions.

But I just point that out. It is a concern that I have, and by the way, if we get through this hearing, you are free to write to us or comment otherwise on some of these things, because there are legitimate questions that we do need to try to get answers to as we go through the legislation.

But let me yield five minutes of questioning to Mr. Scott.

Mr. Scott. Thank you, Mr. Chairman. I have a couple of questions.

Ms. Neas, we heard a suggestion, I think, that you can't discipline students. When we started out with IDEA, many disabled students were getting no services at all. And with a cessation policy, there is a significant financial incentive on the school system not to provide services. The present law prohibits them from ceasing services. And I guess my question is, first, can you, in fact, remove a student from the classroom for disciplinary reasons, and why should we require a continuation of services for a child that has been removed, even when the child ends up in another classroom, another school, at home, or even in prison?

Ms. Neas. Thank you, Mr. Scott.

First of all, IDEA at this moment in time allows any school personnel to remove any child for up to ten days, just like they could do for any other student. There is nothing in the law that prohibits a child that does something, violates his school code of conduct, from being immediately removed. The rules are for how long based on the violation, but absolutely, schools can remove a child today, at any time, when they violate the school code of conduct.

Why do you continue services for children with disabilities? Our research has shown that when kids don't get their services continued, they usually drop out. These kids usually don't come back to school, and they usually get into more trouble if that is what their problem is. All kids get into trouble when they aren't connected with the education system; our kids seem to fall farther behind. And it is also important to continue educating services wherever they may be.

One of the things that we want to say about the whole issue of discipline is if a student is posing a discipline problem, there is something probably wrong with that child's intervention program, and you need to look and see why it is happening and what can be done to accommodate it? A child may not fit in a particular classroom, and so maybe there are other supports or some other place where that child could be successful. The current law already allows for all those questions and that dialogue to take place.

Mr. Scott. And we have found that those who do not receive services are much more likely to end up in prison?

Ms. Neas. Absolutely.

Mr. Scott. And so we end up spending more in the long run.

One part of IDEA that is often overlooked is Part C. In fact, Ms. Neas, it ended up at the end of your statement and I am not sure anybody else even mentioned it. Can you explain why services are important at ages 1 and 2 instead of waiting till 5 years old to provide services?

Ms. Neas. Absolutely. For anyone who has been a parent for the first time, I always say they don't give you an owner's manual. When you bring the baby home from the hospital they just say, "Okay, you have to figure it out, mom."

For families with a kid with special needs, they need extra help figuring out what it means for that child, and what it means for that child to learn to hold their bottle by themselves, or learn to sit up, or learn to roll over. And all those things need to happen before children can do the next set of things that they need to do. Until you can help families facilitate the development of their children, those children are going to go to school having greater health care needs. You know, if a child with cerebral palsy doesn't get physical therapy, and their whole body curls up like a ball, the only way that you are going to get them to be able to use their arms and legs and be productive is probably by surgery, as opposed to having physical therapy when they are very young.

How do you include a child with a significant disability in the regular course of your family life, going to church, or going to Grandma's for Sunday dinner? Those are all the things that are really important that the early intervention system helps families do; helping families learn to be families.

Mr. Scott. Now, on a cost-benefit basis, do we get more bang for the buck for the marginal students? I mean, for a couple of hundred dollars, can we get services that are significantly meaningful?

Ms. Neas. Absolutely. I think you get services for a very young child so that they gain the skills that they need to go to the next level of development. We see lots of kids who get early intervention services who go to regular preschool. They don't need Special Ed preschool; they can go to Head Start, they can participate in their neighborhood childcare program. They don't need extra services. If they didn't have anything, when they showed up at kindergarten for the first day, they would be woefully behind their peers.

Mr. Scott. And I just want to make a comment, Mr. Chairman that many of these services can be done in group settings. So parental training and that kind of thing is relatively inexpensive compared with $100,000 per student and can do so much. So I would hope, Mr. Chairman that we would look at Part C particularly for additional funding.

Chairman Castle. Thank you, Mr. Scott. By the way for reference, we have broken the threshold of $200,000 per student now. Mrs. Biggert?

Mrs. Biggert. Thank you, Mr. Chairman.

Ms. Margolis, first of all, you seem to be stressing early intervention and early childhood learning. How do we find the zero to three, and the three to five year old children for educational purposes? I think that P.L. 94-142 applies to ages 3 to 21, is that correct?

Ms. Margolis. In terms of finding the children, it is really important that school systems have child-find programs in place as required by the IDEA, and figure out how to do television announcements and newspapers ads.

We have seen in Maryland that getting children identified at an early age has not been nearly as much of a problem as some resistance on the part of some school systems to identify older children, who have a history of behavior issues. We see in our discipline project, cases come to us for disciplinary reasons. When we look at those cases, often they are children who have not been identified despite repeated suspensions for maybe 40, 50 days a year for four or five years in a row. And the school system either has refused to go through the evaluation process or has found that they don't have disabilities, and then later they are identified, but they have lost a number of years of their lives.

So it is the identification. I see an issue with identification at a later age, more than a problem at an early age, at least in my state.

Mrs. Biggert. Would you like to say something?

Ms. Neas. We are doing a lot of work with childcare providers across the country to help them understand the developmental needs of kids with special needs. Many of the children that we see have been kicked out of a number of childcare centers for behavior, or they weren't included in the first place because the center didn't think that they could accommodate them.

I think we have a bridge to build between the generic early childhood community and the Special Ed early childhood community. We are hoping to see this happen this year with the reauthorization of the childcare and development block grants and with IDEA, in order to have some corresponding links especially between the training resources for childcare providers and how to spot a potential disability. The final link would be the steps to take to get that family hooked into that 800 number, where to call, and what to do. That would help a lot.

Mrs. Biggert. Both of you are saying that we miss a lot of young children that should be included in this. My experience and what people have said to me is that sometimes the schools actually place children there that shouldn't be. I know there was the story of one child who after five years in placement, was discovered to have no learning disability and had not achieved their potential once they were removed from that.

Is that a problem? I see a couple heads nodding here. Dr. Wolf, and Dr. Tynan?

Dr. Wolf. Yes, ma'am, it is a problem. And we can see how the incentives push in that direction in some cases, particularly under a strong results-oriented accountability system like the No Child Left Behind system. It does create some incentives for local districts, if a child is not performing well, to assume that it is because of a disability, and then exempt them from testing and accountability requirements. And that is why I think it is particularly important that the accountability provisions in IDEA should track those of the regular education programs as much as possible, to remove that incentive to mislabel children who are struggling as disabled.

Mrs. Biggert. Thank you. Dr. Tynan?

Dr. Tynan. Yes, we also know statistically that African American children are twice as likely to be classified as mentally retarded and more likely to be classified as learning disabled, and some parents feel that this is a new form of segregation. I know in the Wilmington area, many African American families prefer to send their children to parochial schools or Christian schools to avoid that whole issue, and these children are educated quite well in those private school settings.

In my own practice in the last year, I have seen three or four children, all African American, referred for "hyperactivity," and when I test them I find out they are gifted intellectually, a thought that never occurred to the teacher as this little boy was buzzing around the room. So identification is a problem, and good early screening and assessment are problems, and there are some biases still out there.

Mrs. Biggert. And do you think that we have not made the identification process precise enough? Should be alternatives if you have a child that is very rambunctious? There are some teachers who say, "I just don't want to deal with this."

Dr. Tyman. Exactly. Teachers need to be trained to manage behavior more effectively, and to appropriately look at things more in terms of developmental stages. That would be the first step. Again, a lot of teachers in the K through 3 are wonderful, but some of them don't appreciate the range of developmental behaviors you can see in children that age.

Mrs. Biggert. Thank you. Thank you, Mr. Chairman.

Chairman Castle. Thank you, Mrs. Biggert.

Ms. Sanchez?

Ms. Sanchez. Thank you, Mr. Chairman.

I am really thrilled to have five experts on IDEA in front of me, because it is a very complicated subject. I don't profess to be that familiar with it, other than to say that I have some employees and friends who have children who have had problems, and who have suffered trying to get their children identified within the system. And so I can understand, as a parent, some of the concerns and the problems that exist there.

I also, of course, have school districts that are pulling their hair out with respect to how to get this done, and why it is costing so much money. I truly believe, to go back to something that Dr. Wolf said about paperwork and litigation that the reason we see so much paperwork is because people are afraid.

In my district there are similar cases, speaking of $100,000. I have a kid in my district that has to be flown to Wyoming to go fishing every weekend, according to his little IPA plan, because that is what is going to be the best thing to make him move forward and is the right thing for him. In that particular case, we are talking about a quarter of a million dollars. Believe me that is not the least expensive of the ones that I see out in Orange County California.

First, I would like to ask Ms. Margolis, as a parent, what do you think would be a limit on the amount of money that we should spend on a child if a child has some sort of a problem? Do you think it would be unfair to say that we shouldn't spend more than $100,000 considering that we are only paying $5,500 for a regular kid? No kid is "regular" anymore in the classroom, by the way. I have a mom who teaches, so I know that. But as a parent, what would you say to something like that?

Ms. Margolis. I would be extremely offended by the idea of a limit on the amount of money to be spent. I think it is important to recognize that the number of children who require what are perceived to be extraordinarily expensive programs are often children who have been very illserved by their school systems for a number of years. This exacerbates the disabilities and exacerbates the problems they have, so that by the time they are older and clearly need another placement, their disability has become more severe, and they have let this be a failure in the school system.

So I think because the IDEA is based on the individualized needs of students it would be completely contrary to the intent of the law, and completely offensive to me as a parent, and I am sure to others, to think that our children are worth a certain amount of money.

Ms. Sanchez. Tell me why you think it offensive.

Ms. Margolis. Why? Because it says to us that our children are only worth a certain amount of money. And it feeds into what I think a lot of us perceive as an idea on the part of society that somehow our children, or somehow we as their parents, are worth less because they have disabilities. And I think it perpetuates that notion.

Ms. Sanchez. Okay.

This is a question for administrators. Would it make your life easier if you knew that you had some sort of a cap per child for whatever it was that you were trying to do, or would that just hinder your ability to help that child?

Mr. Lock. I can really only speak to the experiences and the frustrations that my teachers and I have had. I have been working with elementary-age children for nearly 30 years, both as a teacher and as administrator. I have never been out of school.

The whole question of over identification of students, I think, is a difficult one to answer, because it has been my experience that on the one hand we have parents clamoring to have children identified for Special Education services because the kind of Special Ed programs that probably were in vogue 10 to 20 years ago are not what we see in practice in the schools today.

We have Special Ed teachers who work in the general classroom with Special Education children, providing support to those children in an inclusion setting. Parents whose children are not successful in school, whose children are underachieving, who may have disabilities that do not meet the criteria for placement under IDEA in that district, want as much as they can and parents should be the main advocate for their child.

I have had parents in the last 10 or 15 years really change from not wanting their child to be identified as a Special Education child to parents clamoring to have that resource, because they like the way that we implement it. We want to include children in the mainstream. We don't want to focus attention on children, or remove them from what other general education children are receiving.

So in order to do that, it has required additional staffing to make that happen. It requires additional training to make that happen. Certainly we spend a lot of time on staff development with our own general education teachers and meeting the needs of our growing numbers and diverse population of students.

Again, in my experience there are more and more parents who come and proffer their own child for screening, and then may appeal the decision of our school committee when we say, "we don't believe your child will be found eligible for Special Ed under the guidelines that we have." We have parents appealing that decision because they want the services for their child. So many times now, we have to broker that.

I don't know if over identification is related to a much more proactive parent community, a much more educated parent community, who are familiar with the resources and use whatever resources they can for their child.

I wanted to comment earlier on the atmosphere that my colleagues have spoken about here regarding the fear of litigation. But that really comes into the IEP meeting, so that with all of the documents, and all the signatures that we require, the kind of atmosphere that is created in a sense could be very adversarial if it weren't for the confidence those parents have, or the trust that they have in their school system. It takes a while to develop that; new parents coming in really don't have that baseline.

So in a sense the kind of dialogue that you would like to see happening, the kind of communication between parent and between teacher, whether it is a general ed teacher or the Special Ed teacher, I think has been eroded or hampered by the legal aspects and all the paperwork. Both school systems and parents feel that if they don't get it documented, and something happens down the road, they want to be able to come back to that meeting or those agreements and those documents and exploit that. It has had an overall effect, I think, on the kinds of communication and dialogue that occur within the school between parents and teachers.

Ms. Sanchez. May I ask one more question?

Chairman Castle. You can ask one very short question.

Ms. Sanchez. Okay. This is to Dr. Tynan.

You talked about shrinking the disability categories. Would that make certain categories, or would it make particular things? For example, there are a lot of kids now who come in and they have attention deficit disorder (ADD). Would that be considered as a more mainstream type of disability and be moved into the general classroom? What are you advocating in this disability category shrinkage?

Dr. Tynan. Currently, there are 14 or 15 different categories. And I think it would be helpful for a child who is experiencing problems in learning and behavior in the classroom, to not concern ourselves with an extensive $4,400 evaluation to decide whether it is a learning disability or an ADHD problem, and whether it can be categorized into one category or another. It would be helpful to just have funds available to recognize that children with these problems are there, and to be able to use those funds to supplement the classroom instruction.

Ms. Sanchez. Thank you. Thank you, Mr. Chairman.

Chairman Castle. Mr. Souder?

Mr. Souder. I thank you each for your testimony today. It has been very interesting. I have never heard a more stirring combination of testimony from both advocates and the public schools as to why we should be providing choice.

Generally speaking, when there are parental choice debates, the concern is that the private schools might cherry-pick, taking the easiest-to-educate kids out of the system and the kids in the schools are left in a wholly different direction. What we have heard today is that there would be less paperwork for the public schools and would be a tremendous savings for the public schools if these kids were taken out. There would be less unruly classrooms if they were taken out. If the numbers that we have heard today were correct, it would be a tremendous value. So it is hard to see why anybody really would be against flexibility in best interests of the child and the parent.

I also know that this is an incredibly difficult issue. My daughter is a schoolteacher, and she is wrestling with it. I have also met with many parents, and the reason the adversarial situation developed is that many parents felt that the school system was not responsive. And that is how we wound up with a lot of this paperwork and a lot of the lawsuits. In trying to rebuild that responsiveness, it has been difficult because it has led to what everybody agrees is now too much paperwork. That is partly because of the history and a feeling that we could go back to where we were before. And this is not going to be an easy thing for this Committee to address, as to what paperwork is required or not.

I was fascinated to know there are multiple classes of kids with special needs and disabilities, ranging from ones that are very expensive trying to mainstream, to the types that are newer and where a lot of the growth in IDEA has been. How do we draft accountability into the legislation? I have some concerns and continue to have concerns about national testing and disaggregating data down to an individual basis. We cannot have it zeroed in on an individual student, which is difficult, because in some small schools there may only be one student. How can we figure out how to do that?

First, let me ask Mr. Lock, and I would like further comments from others, would you accept a reduction in paperwork in exchange if you saw improvements in the scores? In other words, once the school established that the different categories were learning, could you reduce the paperwork? Would that be something that would be acceptable?

Mr. Lock. The paperwork does have a purpose in outlying. I am not saying get rid of all the paperwork; I am not saying that at all. In the testimony I provided, there were nine suggestions about ways to reduce the paperwork.

Certainly there are things that need to be included to address the goals that the parent and the school want to work out for their child. There is an assessment component that is included, not only the kinds of assessment that will be done on a regular basis, but also the assessment that is either required by the district or the state, and the kinds of accommodations that are going to be made with that assessment as well.

I think what has happened is that we have broken the whole communication process down into so many small parts, for some of the reasons that you and others have described, that each part almost takes on a life of its own. Whether it is specific objectives that the teacher is going to implement in a classroom, whether it is specific accommodations the teacher is going to implement in the classroom, or the specific accommodations that the school is going to implement in a testing setting, or whether it is a state test or a local test, certainly what we are trying to do is make it very clear in the school and parent's mind what our expectations are for this child, and how we are going to measure that, and how we are going to report it back to the parents.

I don't really see the connection between the volume of paperwork and the academic success that a child is having on any kind of assessments.

Mr. Souder. Well, I would appreciate if each of you could maybe give a written response, because one of the fundamental questions is that if we reduce a lot of the specifics of this paperwork, there is a concern that we will go back to where we were before, and that some parents will not receive adequate individualized plans driving towards success. We could make some changes, but there is a concern and you had specific suggestions in your testimony.

Are there differences that would require a specific education plan for what Dr. Tynan has called the Class I group, or maybe where you have a learning deficiency? Maybe we are better off having trained teachers and a generalized plan for trying to deal with that subcategory, as opposed to a specific education plan for each student. And how would we know that it is working? Because indeed, as discussed in some of the testimony, in spite of this effort and in spite of all this paperwork, we are not seeing the movement towards results.

The parents really don't care about the process. What they want is a good education for their kids. And so one of the questions is how can we write a bill that tries to hold school systems accountable? The parents would accept one-third of this paperwork if they knew their kids were going to get a better education, and that ultimately should be measured some way. The question is how do we measure that so we can try to reduce some of the cost and increase the effectiveness of the program? Because if we can't figure out that relationship, we are unlikely to really have much reduction in paperwork, because of the past concerns about what happened in the public school systems. That is our dilemma. How to do it?

Ms. Neas. Just very briefly, Mr. Souder, I think one of the things that I appreciated from Mr. Lock's testimony was the time that it takes to work with parents. When you walk into an IEP meeting, the only person who doesn't have any training about the process is the parent. And one of the things we have been entertaining is would it be possible to hook up parents with peer families who have been through the process. A peer who has been through it before would explain an IEP meeting, and the sorts of things you need to think about before you get in there so that people come into that process understanding what the outcome should be, what they need to know, and what everybody's role is.

I think facilitating the communication between parents and the schools is one of the things needed. When IDEA works, it is because communication works. And what we can do is try to help parents understand what to expect and what should be the outcome of the IEP.

Ms. Margolis. And if I may comment very quickly on the paperwork issue, I think it is very important to look at how much of that paperwork comes from poor policies and practices at the state and local level, and to what extent states think they have to require paperwork because that is what the regulations require, even if they don't.

As an example, in Baltimore City any time a change is made to an IEP, even if it was the meeting two months before an assessment comes in or whatever, whenever an IEP is revised, the team rewrites the entire IEP again. There is nothing in the IDEA that requires that kind of time and that kind of paperwork. And I think a lot of the paperwork that is complained about, if you analyze it, will be the result of poor policy and practice at the state and local level, not because of the IDEA.

Mr. Souder. Mr. Chairman, thank you.

I think this is going to be one of our major efforts trying to figure this out. In talking with different parents, I think the peer referrals and help is important. But I have also met with parent groups from multiple schools in my district, and in fact some of them are meeting with peers and they are still struggling. Probably their expectations may not match the ability of the school system's financial ability to meet it. Some of it is a lack of understanding of the different challenges you are facing with each kind of kid, and they may not have had a student of that type there before. And although that is helpful, it will not change a lot of the system.

A second thing, if I may say is that even the seemingly irrational paperwork things, including what we heard about referrals and about a certain class, are there because there was a case somewhere where somebody was sued, because a school didn't tell a student about a program, and that parent didn't know about that program. And my guess is the reason they want to make sure that the plans that are changed are rewritten each time is that when an adversarial relationship develops, which is in a fair percentage of these cases quite frankly, if there isn't a paperwork trail, the school system is left undefended.

Now literally I am not taking sides here. I know that this is the biggest cost pressure on the public schools, and the most difficult thing for the teachers. But it is not without some justice that we have wound up in this kind of situation, because many of those kids take such an extraordinary amount of time and take so much effort, and quite frankly, can slow down a whole class that they were ignored, or shunted off to the side, rather than be addressed. And this is probably the biggest cost, very nearly, within the school system today, and the most difficult sub-part.

And I thank the Chairman for his indulgence.

Chairman Castle. Thank you.

I would like to comment, but we are going to have a few more questions by some of the Members, including myself, who wanted to follow up on a few things, and then we will be finished.

But I sympathize and empathize with a lot of what Mr. Souder stated. I thought Ms. Margolis' statement was interesting about the Baltimore schools. In general in IDEA, you hear a lot of anecdotal evidence of circumstances such as that, and yet there doesn't seem to be a way of determining who is doing it right and who is doing it wrong in this field, more than in most fields that I deal with. It is very frustrating.

Some of the over identification issues, the paperwork, whose responsibility it is, local decisions being made that take up a lot of time, et cetera, and I am not asking a question of any of you as I say this, it is just I find it to be frustrating. There seems to be a lack of really good oversight as to how IDEA works, because I don't think there are any of us, the strongest advocates or the ones most concerned about IDEA, who don't want to see the system work. The basis of the system is in taking care of the young children and giving them the opportunities, not in paperwork and litigation and IEPs and all those things. That leads to it sometimes, but if you overdo that, then you take away from the other side of it. And I think there is a sense out there that that is what is happening. So I just make that statement; it is something we are going to be looking for as we go through the legislation.

Let me take a few more minutes and, Dr. Tynan, start with you. You have been touching on this subject a couple times in your statements. You talked about 14 or 15 different categories of problems here. You talked about the likelihood that classification of mental retardation is faster in America. But my question to you is over the past ten years, what have you observed regarding the growth in the number of students in Special Education who have lesser disabilities? This is another area that I hear about a lot, but I can't give you statistics on it, and you are probably going to have to do it without statistics as well. Mr. Lock, for example, testified that now parents are coming to him advocating having their kids being classified as having disabilities to get into these programs, which would indicate to me that there is a broader expanse now of students who we are identifying in this situation. I don't know if that is good or bad, but I just want to see if it is happening right now.

Dr. Tynan. I think there is sufficient data particularly on the growth of the learning disabilities category, and the most rapidly growing category is the "other health-impaired," in which the children with attention deficit/hyperactivity disorder are classified.

In our book chapter, we note that parents who have a family income greater than $100,000 per year are much more likely to ask for accommodations on the SAT due to disability than families with lesser incomes. So there is knowledge in certain groups that some classifications get you some services. So it has certainly been a growth area.

I think also it is helpful sometimes to look at examples outside of the public education system. I know, for example, in the estimate I was given by the Catholic schools in Wilmington that seven to eight percent of their children are diagnosed with attention deficit/hyperactivity disorder, and they are taught in those schools. Sometimes there is a public-private partnership, in that there will be some learning disability services provided. But sometimes they are completely contained within the private school. And they somehow do this rather well at a much lower cost, with a lot less paperwork.

If I want to institute a behavioral plan at a private school, I show up, there is a teacher, there is a principal, there is me; we write it up, it gets implemented. We don't have to go through all the paperwork that Mr. Lock has talked about. Is there any way we can take those lessons learned in some other school systems and apply them to the public school?

Chairman Castle. Thank you.

Dr. Wolf, I want to ask you a question, and I need to get a brief answer from you if I can. You didn't talk about it too much, but someplace in your testimony is this whole business about compliance models that currently govern the IDEA statute. I would characterize this as a lot of procedural aspects of things that have to be done, as opposed to the substance of what we need to do for our kids. In fact, apparently, in the Office of Special Education and Rehabilitative Services, they have 814 different compliance points on a checklist, which is virtually impossible for anybody. I would like your thoughts.

Should IDEA be refocused to concentrate on educational results, rather than inputs and processes? I understand you need some inputs and processes, but are we too input-process-compliance procedurally oriented, and not output-enough-oriented at this point? And if so, what can we do to effectuate those changes?

Dr. Wolf. Yes, Mr. Chairman, I certainly sympathize with your perspective on that question.

I really think that the two essential components are the use of gain scores, which I think gets away from a sort of forced procedural access question because a lot of the procedural requirements come from the idea that every child is different. But if you use as a benchmark the child's previous performance, you automatically correct for all that different-ness, and you don't need all these procedural requirements that come with it.

And the second thing is some element of an exit option for parental choice when things get really bad. Because I think another source of a lot of the procedural requirements is the fact that with Special Education, we try and empower parents all the way to the point of them actually choosing their program, and then stop them there. And so many of the procedural requirements are rights for appeal, rights for access, rights for process to empower parents. But then they stop at the point of actually giving them the opportunity to choose their child's school or their child's program, if it is clear that the current one isn't serving them. And I think if you gave them that choice, you could remove some of the other procedural requirements that are guaranteeing parents access.

Chairman Castle. Thank you, Dr. Wolf.

I wasn't going to ask this, but Mr. Lock; something Dr. Wolf said reminded me of this. How many kids in your school actually advance from being in IDEA disabilities programs to being back in regular education programs? I mean, is it one percent, 50 percent? Can you give me some rough guesstimate?

Mr. Lock. That is a very good question; I should have that number for you. Out of the 102 students that we have, some of who are just receiving support, say, in speech from a speech and language clinician, kids come into and leave the program at different ages and different grades. I would say the number of students exiting from our speech and language program, perhaps, would be much higher than those exiting from, say, a program that offers emotional disability support to children, or learning disabilities.

Usually by the fifth or sixth grade, which is the age that my children will be leaving the school, I would say that at least half to 75 percent of our speech and language children will be exiting the program. But probably the majority of our learning-disabled or emotionally disabled children will continue with some degree of support later on into middle school. It may be reduced services, but some support would be continued.

Chairman Castle. Thank you. I am pleased to have that answer.

Mr. Kildee?

Mr. Kildee. Thank you very much, Governor.

Dr. Wolf, first of all, one of my top legislative assistants was a student of yours at Georgetown, so I thank you for that.

You stated and I believe I read it correctly, that there should be a separate accountability of academic achievement for IDEA students. H.R. 1, the No Child Left Behind Act, requires that the performance of schools and school districts and states be judged on the achievement of at-risk groups, the disaggregate of data, and that includes disabled children. So this would mean that the performance of disabled children would cause the school to fall under the bill's timeline for failing schools.

Wouldn't this system essentially encompass your suggestion of having some separate accountability for those students?

Dr. Wolf. Mr. Kildee, it does. That is a nice connection, or a nice combination of examining the needs of regular students and special-needs students together, and extending to the special-needs students the same sort of fail-safe accommodation if a school is failing.

I would say though in the case of Special Education students, it could create a situation where the regular education program is very good at a school, and therefore the scores are good there, and maybe there is enough to just barely get by for the Special Education students. But I think I agree with you that that accommodation is a positive, and is helpful in that respect.

Mr. Kildee. Well, basically we want to close the gap and show improvement within that at-risk group. And if we had students, some extraordinarily disabled students, where there would be little measurable progress, those are not counted under that disaggregation of data. So perhaps we could achieve your goal with a little tweaking of H.R. 1.

Thank you very much.

Chairman Castle. Thank you, Mr. Kildee.

Mr. Scott?

Mr. Scott. Thank you. Thank you, Mr. Chairman.

Mr. Lock, in your testimony you indicated that there are 22,000 students in Fairfax County in the IDEA program. Do you have any idea how many of those are costing the school system more than $50,000 or more than $100,000?

Mr. Lock. No, I don't, but I would dare to say that the number of children that we are unable to serve in the public school system, and who may go into contract services, into a private program for the level of support the child needs, those are the kinds of numbers and those are the students that we would be looking at.

I mean, to my knowledge, those situations don't exist in my district, where those kinds of things happen and those amounts of money were spent within the school district. Now, if a child went into a private facility it is very possible, that the tuition rates or the support being provided could be that high.

Mr. Scott. Do you know how many from Fairfax go to such services?

Mr. Lock. No, I don't.

Mr. Scott. You have a chart here that lists the number of hours that it takes. Is this a typical or exceptional student?

Mr. Lock. No, sir, this is a typical student. And I actually met with my staff last week to put this together. And this would be really the minimum that we would spend.

Mr. Scott. Okay. And you have indicated on the chart that after you add up the time the teacher, the screening chair, the psychologist, and social worker put into getting someone's IEP established, before any services are provided, 83 hours would be put in. When you multiply that hourly rate by the number of students, you are up to $86 million in the County of Fairfax.

"Meeting and testing" looks like it is about half of it. How can you involve many people in a situation that includes multi-disciplinary individual needs and significantly reduce the number of hours? How can you do this right without those numbers of hours?

Mr. Lock. Well, the testing component is a very important component, and I am not saying that we need to, or that that is an area where we can cut. Obviously, the careful screening of students for disabilities is going to be a key piece of any evaluation of a student for support under IDEA.

I think we are probably looking to have adjustments made in some of the other areas, maybe even in the frequency of the assessment that is done, if we are just going to look at assessment. Or tying the kinds of accommodations that we are making in the classroom into the kinds of accommodations we would make in assessment, because every little piece of this really adds up to the total paperwork issue that we have.

And again, what we have tried to do in the time that I have had to prepare testimony for this Committee today is to take a look, and to really think hard with a cross-section of people within our school district, about the kinds of cuts or the kinds of ways that we could perhaps reduce the paperwork commitment and the time commitment. And I have tried to include that in my testimony as things that we could do and still maintain the integrity of the program of identification, and also the provision of services to students.

Mr. Scott. Some of this looks like it would be very difficult. I mean you are not going to cut down the amount of testing. If you are going to have multi-disciplinary people involved, I don't know how you can do that without setting up a meeting. Can you make a significant dent in the number of hours?

Mr. Lock. The main concern that we hear from our Special Education teachers, upon whom the weight lies, is not only just about the paperwork, but also using technology, for example, as a way to automate the process of including information. Having objectives, for example, that we could access through a database and be able to include more easily into a document. If you look at the documents, and I provided a sample IEP, there is a lot of repetitive information that is included from document to document, that could be automated, for example, to save time.

Cutting back the frequency of meetings by trying to reduce the formality of the process would help. Certainly you need to document what needs to be included to support students, but for many children it is not necessarily to have as frequent formal meetings as is required. And there are ways that I think we could make the process more informal and less frequent, in terms of continuous assessment, which is really a part of what we do in public education. So there is an ongoing assessment. Reporting to parents is part of what we do on a regular basis.

There are things that are already in place in our general education program that are in place for our Special Education program as well. I hate to keep going back to those recommendations, but those are, we think, the most significant areas that really need to be looked at, in terms of what we can do to reduce but still maintain the integrity of the program and the services we provide?

Mr. Scott. Ms. Margolis?

Ms. Margolis. Yes, if I may address that, thank you. I think one of the things that might cut down on the number of hours of meetings, and potentially on the frequency, is if assessment results are shared with families prior to meetings, and if drafts of IEPs are exchanged back and forth. That often really reduces the amount of time that people need to sit at the table, because a lot of the hashing out of the IEP and looking at test results and questions that come up can be addressed outside of meetings.

I have certainly found in representing children that the meetings that run the smoothest and that are the most efficient are the meetings where we have had that paperwork ahead of time. It enables me to meet with families to talk with them, to figure out what questions they have, and to comment on a proposed IEP draft, rather than only being able at the time of the meeting to raise any possible concerns. And often we have been able to work out a lot ahead of time.

So I think that the provision of evaluation results prior to meetings and exchanging drafts of IEPs could go a long way towards reducing the amount of hours people spend in meetings.

Mr. Scott. Thank you, Mr. Chairman.

Chairman Castle. Thank you, Mr. Scott. And I believe we have reached the end of our questioning.

I would like, obviously, to thank the witnesses for your valuable time that it takes to prepare to get here, and your testimony here today. And I would like to thank the Members for their participation.

If there is no further business at this time, then we stand adjourned. Thank you.

Whereupon, at 12:30 p.m., the Subcommittee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL N. CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE

Chairman Michael N. Castle
Subcommittee on Education Reform

Opening Statement

May 2, 2002

Good morning. Thank you for joining us for the second in a series of hearings that the Subcommittee on Education Reform will conduct on the reform and reauthorization of the Individuals with Disabilities Education Act. Over the next few months, this Subcommittee will explore ways of improving IDEA to ensure that no child -- regardless of his or her challenges -- is left behind as the President and the Congress continue their efforts to improve America's schools.

While the 1975 legislation was a major milestone in the effort to end the chronic exclusion and mis-education of disabled children, it is today a law will challenge this Congress as we seek to provide new opportunities for all children.

I believe must build on the positive changes made in the 1997 reauthorization and allow this law to evolve. No longer is it simply enough to provide our disabled children access to public schools. Now more than ever, we must do more to see that disabled children are given access to an education that maximizes their unique abilities and provides them with the tools for later success.

It is my hope that these hearings will spur discussion and bring fresh thinking to our examination of IDEA. Some of these key issues include:

- focusing IDEA on the academic achievement of special education students;
- making the federal special education program more effective and adding accountability measures that mirror those envisioned by the No Child Left Behind Act;
- examining ways to provide procedural relief without reducing important protections for disabled students and their families;
- finding ways to attract and retain special education teachers -- and doing more to help regular education teachers address the needs of the special education students in their classrooms;
- promoting early intervention so that we can provide appropriate interventions and

maximize the student's later academic success;
- identifying and eliminating the root causes of overidentification, especially among minority children;
- ensuring school safety for all students;
- promoting nonadversarial resolutions when disputes arise between parents and teachers; and
- increasing parental involvement in the education of their disabled child.

Today this Subcommittee will explore at least several of these themes, including accountability and procedural requirements, and we are fortunate to welcome five witnesses who will speak from a number of perspectives, including a pediatric psychologist, an education researcher, an elementary school principal, a leader from the disability community, and a parent of a disabled child who has also worked as an attorney advocating for parents of special education students. With their help, it is my hope that members will better understand these complex issues and inform our discussion on the reauthorization.

In a moment, I will proceed with the introduction of our witnesses, but I will now yield to the distinguished Ranking Member of the Subcommittee, Mr. Kildee, for whatever opening statement he may wish to make.

APPENDIX B - WRITTEN STATEMENT OF W. DOUGLAS TYNAN, Ph.D. DIRECTOR, ADHD AND DISRUPTIVE BEHAVIOR CLINIC, A.I. duPONT HOSPITAL FOR CHILDREN, WILMINGTON, DE

Testimony of Dr. W. Douglas Tynan

Subcommittee on Education Reform
House Committee on Education and the Workforce

May 2, 2002

Good Morning Mr. Chairman, and members of the committee.

My name is Douglas Tynan. I am the Director of the ADHD and Disruptive Behavior program at AI duPont Hospital for Children in Wilmington DE, and I am a Pediatric Psychologist. My interests in Special Education come from multiple sources. In my career path, I was a special education teacher at a private school in Boston when Massachusetts was initially implementing its special education law, Chapter 766. Later, as a Psychologist affiliated with different Children's Hospitals I have been involved in the evaluation of children and in helping design and implement education plans in both private and public schools. On a more personal note, I have a nephew, now 30 years old, who has autism. He has benefited greatly from IDEA based programs that he attended in Suffolk County, New York. I know full well how important this program is to families, including my own.

As recently as 1973, perhaps as many as one million students were denied enrollment in public schools solely on the basis of their disability[1]. This changed with the passage of the Education of All Handicapped Children Act (PL 94-142) (later called IDEA) which mandated that children with disabilities receive a free and appropriate public education in the least restrictive environment. IDEA has been largely successful in opening up educational opportunities for children with disabilities. Unfortunately, IDEA also has had some unintended negative consequences. These include:

- the creation of incentives to define an ever-increasing percentage of school-aged children as having disabilities;
- re-direction of financial resources from regular education to special education; and
- perhaps most importantly, the application of an accommodation philosophy to populations better served with prevention or intervention strategies.

As required by IDEA and its implementing regulations[2], the special education system is predicated upon first classifying students into one or more federally defined disability categories. Once classified, they are then provided special education services and accommodations. Those children who do not meet the district's criteria for eligibility do not have to receive special education services or accommodations, even though they were initially referred because of school difficulty. As a result of this process, two distinct classes of students experiencing academic difficulty emerge: those classified as disabled who receive special education assistance and those not classified who do not.

Currently, more than 10 percent of all school children in public schools are in the special education system. Of these, approximately 90 percent have been classified as having relatively mild disabilities, such as a specific learning disability, speech and language delays, mild mental retardation or an emotional disorder. Students in these categories are typically identified after they have attended school for some period of time in a standard regular education classroom. The remaining 10 percent of children in special education fall into categories reflecting a greater severity of disability, such as moderate to severe mental retardation, early infantile autism, sensory handicaps such as blindness or deafness, and severe physical and health impairments. These children are usually identified far before school entry age.

Recommendations for Reform

The first step in special education reform is to recognize that the system currently serves three distinct populations: (1) those with significant severe developmental disabilities and sensory and physical handicaps; (2) those with milder forms of neurological conditions, such as learning disabilities and attention deficit disorder; and (3) those with conduct or behavioral problems.

Children with significant sensory, cognitive and physical disabilities. The first group are children born with birth defects, serious sensory or physical disabilities, and significant cognitive delays. In the majority of such cases, these children will have been identified as disabled during infancy and the preschool years, frequently by health care professionals or early childhood education specialists, and will have already begun receiving intervention services before they enter kindergarten, we know who they are, and to a large extent, their medical, rehabilitation and educational needs.

Children with neurological dysfunction. The second, and by far the largest, group of students currently in special education is comprised of those with mild forms of neurological dysfunction, such as mild mental retardation, learning disabilities and ADHD. The first question that needs to be addressed concerning this subgroup of special education students, especially given the emphasis under the 1997 IDEA amendments for inclusion of these students in the regular classroom, is what is so "special" about the special education they receive?

In many cases, the answer is not much, except for the fact that they are classified differently from their peers. Thus, rather than perpetuating the myth that students with relatively mild disabilities are receiving a different kind of instruction compared to non-disabled students, we should reconstruct regular education so as to maintain these students more effectively in the regular classroom. By teaching reading with proven, effective methods, many problems can be prevented or addressed in the classroom with resource help, without going through an extensive classification process. Many children with similar problems are educated in parochial schools and other private schools without labeling. A similar approach could be used for children with ADHD. In a recently published large-scale treatment study of students with ADHD[3], the best outcomes were found for those children who received a combination of relatively low doses of medication, a classroom behavior modification program and behavioral family therapy to help the parents better manage their child's home behavior. These results suggest that students with ADHD would benefit more if schools would structure their environments more clearly, with clear consequences for good and bad behavior. In such a revised setting, programs are designed either to help the child develop compensatory skills or to allow the child to perform at a higher level. Again, many parochial schools teach these children effectively within their current structure.

Children with behavioral problems. The third major sub-group of students currently receiving special education services and accommodations is comprised of those with conduct or behavioral problems. Students with these types of disorders, when seen in the mental health system, are usually diagnosed as having either oppositional defiant disorder or conduct disorder, characterized by refusals to comply with requests, emotional overreaction to situations and failure to take responsibility for their own actions.

Effective treatment of these disorders involves making these individuals strictly accountable for their behavior, insisting on compliance with requests, and helping them learn to cope calmly with stressful situations[4]. One effective approach would be to develop school and system-wide interventions designed to reduce these problems overall, rather than classifying and then segregating individual students

Reforming Special Education Funding. Currently, schools draw down special education funds based upon the number of students identified as having a qualifying disability under the IDEA, regardless of disability. This funding model fails to recognize the significant cost differences to educate different populations. It also gives parents little choice in programs. First, children who have severe special needs should have state government help fund local programs for this population. Second, attach funding to students identified as in need of special education through the use of vouchers for both evaluation and education. Parents could use the voucher to pay for both the evaluation process and the specialized educational experience of their choice. This could be done either within, or independent of, a broader school voucher program.

The use of vouchers would also help reduce the current adversarial nature of special education. By providing parents with choice at the outset, for example, there would be no need for an extensive appeals process. If a child was failing in regular education, and an assessment was needed to determine why, the parent would have the choice of having the evaluation done at school or by an independent expert who accepted vouchers. Parents could then seek schools that are most effective at teaching students with their child's particular type of disability. Such a system could include funding for public, private, and public-private partnership schools.
Thus, a reformed education system would take into account the differing needs of important subgroups of special education students, empower parents, not lawyers. Federal legislation ensuring that no student is left behind is an important principle. It is now time to ensure that this principle actually translates into better outcomes for students with special needs. In short, it is time to make special education "special" once again.

1. U.S. Congress, Committee on Education and Labor, Select Subcommittee on Education. *Hearings*. 93rd Congress, 1st Session, 1973.
2. Procedural safeguards for the IDEA are delineated in the US Code of Federal Regulations, Title 34, Subtitle B, Chapter III, Part 300.
3. Jensen, Peter, and the MTA Cooperative Group. "A 14-Month Randomized Clinical Trial of Treatment Strategies for Attention-Deficit/Hyperactivity Disorder." *Archives of General Psychiatry* 56(1999): 1073-1086.
4. Kazdin, Alan E. *Treatment of Antisocial Behavior in Children and Adolescents*. Homewood, IL: Dorsey Press, 1985.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: William Douglas Tynan		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No X
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: None		
3. Will you be representing an entity other than a government entity?	Yes	No X
4. Other than yourself, please list what entity or entities you will be representing:		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract:		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list:	Yes	No X

Signature: PhD Date: 5/1/02

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Chapter 2

Time to Make Special Education "Special" Again

Wade F. Horn and Douglas Tynan

Introduction

Prior to the 1950's, the federal government was not routinely involved in the education of children with special needs. A few federal laws had been passed providing direct educational benefits to persons with disabilities, mostly in the form of grants to states for residential asylums for the "deaf and dumb," and "to promote education of the blind." These laws, however, were in the tradition of providing residential arrangements for persons with serious disabilities, services that had existed since colonial times.

Without applicable federal law, how—and even whether—children with disabilities were to be educated within the public schools was left to the discretion of states and their local school districts. Although some public schools undoubtedly provided exceptional services to children with disabilities, others did not. Indeed, as recently as 1973, perhaps as many as one million students were denied enrollment in public schools solely on the basis of their disability.[1]

> ***The IDEA has been largely successful in opening up educational opportunities for children with disabilities. Unfortunately, the IDEA also has had some unintended negative consequences.***

This state of affairs changed dramatically in 1975 with passage of the Education of All Handicapped Children Act (EAHCA). Renamed the Individuals with Disabilities Education Act (IDEA) in 1990, this landmark legislation mandated that children with disabilities must receive a "free appropriate public education" (FAPE) in the "least restrictive environment" (LRE). Critical components of the law include requirements for an initial evaluation to determine eligibility for services and accommodations, individual education planning, the provision of individualized services, and procedural safeguards to ensure the active involvement of a child's parents.

The IDEA has been largely successful in opening up educational opportunities for children with disabilities. Unfortunately, the IDEA also has had some unintended negative consequences. These include the creation of incentives to define an ever-increasing percentage of school-aged children as having disabilities, an enormous redirection of financial resources from regular education to special education, and, perhaps most importantly, the application of an accommodation philosophy to populations better served with prevention or intervention strategies.

Background

In the first half of the 20th century, the federal government's involvement in education was minimal. Special education services in particular were limited to providing states with funds to help establish and run residential facilities for persons with serious disabilities.[2] With the passage of the National Defense Education Act (NDEA) of 1958, the federal government began to play a greater role in elementary and secondary education. Congress also began to provide support to universities to train leadership personnel in developing programs for children with mental retardation. In 1963, Congress expanded these efforts to include grants to train teachers and researchers in a wide range of disabilities. With the passage of these two pieces of legislation, the federal government began to encourage, but not require, the inclusion of children with disabilities in the public school setting.[3]

In the early 1970s, the federal courts, in response to litigation brought by parents of children with disabilities, began to rule that schools owed students equal protection under the law and could not discriminate against individual students on the basis of disability.

Absent such a federal mandate, no state had yet developed a comprehensive program for all children with disabilities. Although by 1973 some 45 states had passed laws providing for the education of children with disabilities, these were not inclusive, and many children continued to be shut out of American schools. Moreover, although school attendance was required for all children, individual children could be excused from that requirement by being classified as "uneducable" by their local school district. Many states did, in fact, turn children away. Many other children were inappropriately placed. Children who had average academic ability combined with physical handicaps, for example, were often placed in classes for children with mental retardation.

In the early 1970s, the federal courts, in response to litigation brought by parents of children with disabilities, began to rule that schools owed students equal protection under the law and could not discriminate against individual students on the basis of disability. In the landmark 1971 case of *Pennsylvania Association for Retarded Citizens v. Commonwealth of Pennsylvania*, a group of mentally retarded children had been denied access to school because they had not attained a mental age of five years as required by state law for school entry. The court ruled that school entry could not be denied to these children based upon mental incapacity but did not specify how such children should be educated once in school.

A year later in *Mills v. Board of Education of the District of Columbia*, the court ruled that school districts could not refuse to provide educational services to children with disabilities because of inadequate financial resources. Rather, the court asserted, schools were required to provide an appropriate educational experience for students with disabilities regardless of the costs involved, a legal principle later included in federal special education legislation.[4] As a result of these and other court rulings, pressure was mounting on the Congress to pass legislation clarifying schools' role in the provision of special education services and accommodations for students with disabilities.

In 1973, Congress responded by passing the Rehabilitation Act, which stated, in part, that agencies accepting federal funds, including local schools, could not discriminate on the basis of disability. In essence, this meant that all children, including those with special needs, had a right to attend school. However, neither funding nor a process for monitoring compliance was included in the Act.

Subsequently, in 1975, Congress passed the EAHCA, requiring that all children must receive a free appropriate public education. Now renamed the IDEA, this landmark federal legislation included requirements for individual evaluation, eligibility determination, individual education planning, and the provision of individualized services.

It also authorized the amount of funding the federal government would contribute to special education based upon a percentage of the national average per-pupil expenditure (APPE) for all educational services provided to special education pupils. Specifically, the EAHCA authorized Congress to appropriate a sum equal to 5 percent of APPE in 1977, 10 percent in 1978, 20 percent in 1979, and 40 percent in 1980 and beyond. The actual level of funding appropriated by Congress, however, never exceeded 12.5 percent of the national APPE. Recently, bipartisan support has emerged in Congress to fully fund the IDEA, although the necessary financial resources have not yet been dedicated to accomplish this goal.

As required by the IDEA and its implementing regulations,[5] the special education system is predicated upon first classifying students into one or more federally defined disability categories. Once classified, students are then provided special education services and accommodations. Either parents or teachers can refer a child for an initial screening. This involves a team comprised of the child's parents, his or her classroom teacher, a school administrator, and an education specialist.

In this initial meeting, available standardized test scores and classroom performance are reviewed. If this screening suggests a significant problem, the team may refer the child for a comprehensive multi-disciplinary evaluation. Such an evaluation typically includes testing by an educator as well as a psychologist, and may also involve evaluations by specialists in speech and language, occupational therapy, and physical therapy. At a follow-up team meeting, reports from the various specialists are reviewed to determine whether the child meets the classification criteria in any of the 13 mandated special education categories.[6] If so, an individualized education program, or IEP, is developed reflecting, at least in theory, each child's unique educational needs.

Recently, bipartisan support has emerged in Congress to fully fund the IDEA, although the necessary financial resources have not yet been dedicated to accomplish this goal.

Those children who do not meet the district's criteria for eligibility do not have to receive special education services or accommodations, even though they were initially referred because of school difficulty. As a result of this process, two distinct classes of students experiencing academic difficulty emerge: those classified as disabled who receive special education assistance, and those not classified who do not.

Between states there are differing systems for carrying out the federal mandate to identify, classify, and provide services for children with disabilities. Within states, and between school systems, there exists enormous variability regarding which students are found to be eligible for special education services. Generally, in wealthier suburban districts where parents have ready access to attorneys, advocates, and outside specialists, most referred children do qualify and receive services. However, in inner cities or rural areas where parents have less access to advocates, children with disabilities are more likely to be refused special education services.

During the eligibility determination process, parents may elect to procure and pay for an independent evaluation which the school must consider, or the parent may appeal to a hearing officer for the school to pay for a second evaluation. Parents may also appeal and request a different set of services or accommodations than the one offered by the school. This is quite different from the usual process that occurs when the parent of a child in a regular education program makes a service request.[7]

> ***Approximately 90 percent of special education students have been classified as having relatively mild disabilities, such as a specific learning disability, speech and language delays, mild mental retardation, or an emotional disorder.***

Currently, more than 10 percent of all school children in grades K-12 are in the special education system. Of these, approximately 90 percent have been classified as having relatively mild disabilities, such as a specific learning disability, speech and language delays, mild mental retardation, or an emotional disorder. Students in these categories are typically identified after they have attended school for some period of time in a standard classroom. The remaining 10 percent of children in special education fall into categories reflecting a greater severity of disability, such as moderate to severe mental retardation, early infantile autism, sensory handicaps such as blindness or deafness, and severe physical and health impairments. Children with these latter disabilities typically are identified in infancy or during the preschool years and frequently require specialized assistance or nursing care in order to attend school.

Problems with the Current System

Although no one argues with the importance of providing a free appropriate public education for children with disabilities and few dispute the good it has done for so many disabled children, several problems have arisen since the passage of this landmark federal statute. These problems include an extraordinary growth in the percentage of children receiving special education; rapidly expanding costs of providing special education, often at the expense of regular education; and the application of an accommodation strategy to populations better served with a prevention or intervention model.

Table 1: Number & Percentage of Children Served Under the IDEA, Part B, Ages 3-21

School Year	Total No. of Children Served	Percentage Change in No. Served From Previous Year	Percentage of Children Served Under the IDEA, Part B *
1976-77	3,708,601	**	**
1977-78	3,777,286	1.8	**
1978-79	3,919,073	3.8	**
1979-80	4,036,219	3.0	5.7
1980-81	4,177,689	3.5	5.9
1981-82	4,233,282	1.3	6.0
1982-83	4,298,327	1.5	6.2
1983-84	4,341,399	1.0	6.3
1984-85	4,363,031	0.5	6.4
1985-86	4,370,244	0.2	6.4
1986-87	4,421,601	1.2	6.5
1987-88	4,485,702	1.4	6.6
1988-89	4,568,063	1.8	6.8
1989-90	4,675,619	2.4	6.9
1990-91	4,807,441	2.8	7.0
1991-92	4,986,043	3.7	7.2
1992-93	5,155,950	3.4	7.4
1993-94	5,373,077	4.2	7.66
1994-95	5,430,223	3.5	7.7
1995-96	5,627,544	3.6	7.83
1996-97	5,787,893	2.8	7.96
1997-98	5,972,341	3.2	8.11
1998-99	6,114,803	2.3	8.3
1999-2000	6,125,833	0.2	8.2

Percentage Change in Total No. of Children Served	
1980-81 to 1989-90	11.9
1990-91 to 1999-2000	27.4
1976-77 to 1999-2000	65.0

Sources: U.S. Department of Education, Office of Special Education Programs (OSEP), *21st Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, 1999), Tables AA1 (1995-99) and 1.3 (1995); also earlier reports and updated tables.

* Calculated based on data from U.S. Census Bureau, Current Population Reports, P25-1095, *Statistical Abstract of the United States: 1999*, Table 14. Percentages to two decimal places are official figures taken from the OSEP's *Annual Reports* to Congress.

Growth in Special Education

In 1999-2000, 6.1 million children ages 3-21 years were found eligible for special education services and accommodations, up from 3.7 million in 1976-77— an increase of 65 percent. (See Table 1.) The increasing number of children in special education is a function not only of the increase in overall student population, but also of growth in the proportion of students determined to need special education. Specifically, 12.8 percent of the student population in grades K-12 were receiving special education services and accommodations in 1997-1998, compared to 8.3 percent of the student population in 1976-77.[8]

There are several reasons why both the number and percentage of children identified as qualifying for special education under the IDEA have grown so rapidly over the past several decades. First, since passage of the EAHCA, both Congress and the U.S. Department of Education have responded to pressure from advocacy groups by expanding the definition of students eligible for special education. For example, children ages three to five are now eligible for services under the IDEA, as are children with autism and traumatic brain injuries. Furthermore, autism, once defined as a rare disorder affecting about 6 per 10,000 children, is now considered more common and children with mild autism, known as Asperger Disorder, are thought to number between 25 and 50 per 10,000 children.[9]

In contrast to an extraordinary 233 percent growth since 1976-77 in the number of children diagnosed with SLDs, the number of children served in all other disability categories combined increased only 13 percent during the same time period.

Even more significantly, in 1991 the U.S. Department of Education issued a "policy clarification" indicating that children diagnosed with attention deficit disorder (ADD) and attention deficit hyperactivity disorder (ADHD) may be eligible for special education services and accommodations under both the "other health impaired" category of the IDEA and Section 504 of the Rehabilitation Act. On March 12, 1999, the U.S. Department of Education codified this policy clarification into law when it published regulations which, among other things, revised the definition of the "other health impaired" disability category by adding both ADD and ADHD as qualifying conditions. Given the extraordinary increase in the number of children diagnosed in recent years as having ADD or ADHD,[10] the inclusion of these two diagnoses under "other health impaired" virtually assures continued growth in the number of students served through special education into the foreseeable future.

Second, the number of children identified under a single category—"specific learning disability" or SLD—has increased exponentially over time. As shown in Table 2, 796,000 children in special education in 1976-77, or 22 percent of the total special education population, were identified as evidencing a specific learning disability. By 1997-98, that number had grown to 2,726,000, or 46 percent of the total number of students in special education. Indeed, in contrast to an extraordinary 233 percent growth since 1976-77 in the number of children diagnosed with SLDs, the number of children served in all other disability categories combined increased only 13 percent during the same time period.

Table 2: Children Ages 0 to 21 Years Old Served in Federally Supported Programs for the Disabled, by Type of Disability.

Disability Category (#s in thousands)	1976-77		1980-81		1985-86		1990-91		1995-96		1997-98	
	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served	Number Served	Percent Served
1. Specific Learning Disability	796	21.6%	1,462	35.3%	1,862	43.1%	2,130	44.7%	2,579	44.7%	2,726	46.2%
2. Speech or Language Impairments	1,302	35.3%	1,168	28.2%	1,125	26.1%	985	20.7%	1,022	18.3%	1,059	17.9%
3. Mental Retardation	959	26.0%	829	20.0%	660	15.3%	534	11.2%	570	10.2%	589	10.0%
4. Serious Emotional Disturbance	283	7.7%	346	8.4%	375	8.7%	390	8.2%	438	7.9%	453	7.7%
5. Hearing Impairments	87	2.4%	79	1.9%	66	1.5%	58	1.2%	67	1.2%	69	1.2%
6. Orthopedic Impairments	87	2.4%	58	1.4%	57	1.3%	49	1.0%	63	1.1%	67	1.1%
7. Other Health Impairments	141	3.8%	98	2.4%	57	1.3%	55	1.2%	133	2.4%	190	3.2%
8. Visual Impairments	38	1.0%	31	0.7%	27	0.6%	23	0.5%	25	0.4%	25	0.4%
9. Multiple Disabilities	n/a	n/a	68	1.6%	86	2.0%	96	2.0%	93	1.7%	106	1.8%
10. Deafness-Blindness	n/a	n/a	3	0.1%	2	<0.05%	1	0.0%	1	<0.05%	1	<0.05%
11. Autism and Other	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	39	0.7%	54	0.9%
12. Preschool Disabled	n/a	n/a	n/a	n/a	n/a	n/a	441	9.3%	544	9.8%	564	9.6%
TOTALS	3,692		4,142		4,317		4,761		5,573		5,904	

Sources: U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, various years); National Center for Education Statistics, *Digest of Education Statistics, 1999*, Table 53 (Washington, DC: U.S. Department of Education, 2000); and unpublished tabulations.

Unfortunately, the SLD category is rife with controversy. In the 1975 law, SLD was defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations," manifesting in a "severe discrepancy" between a student's achievement in one or more subject areas and his or her intelligence, as usually measured by an IQ test. This federal definition notwithstanding, there are no universally accepted validated tests or diagnostic criteria to determine the presence or absence of learning disabilities, nor is there a clear line of demarcation between students who have milder forms of SLDs and those who do not have SLDs.[11]

According to many experts, the lack of a clear definition of and objective diagnostic criteria for SLD makes it possible to diagnose almost any low- or under-achieving child as SLD. Indeed, Dr. James Ysseldyke, director of the National Center on Educational Outcomes at the University of Minnesota, asserts that over 80 percent of all school children in the United States could qualify as SLD under one definition or another.[12]

A third reason for the extraordinary growth in special education is the suspicion that some school districts place non-disabled but low-achieving students into special education classes in order to obtain state and federal funds that are available only after a child is identified as disabled under the IDEA. Although it is unlikely that children without any learning difficulties are being placed in special education, not every low-achieving child is also disabled. However, when services are provided to low-achieving but non-disabled students in regular education, local school districts cannot claim reimbursement for the cost of these services even if they are exactly the same as services provided to students with disabilities. This funding structure provides enormous financial incentives for local school districts to over-identify low-achieving but non-disabled students as needing special education.[13]

The incentive to over-identify low-achieving children as disabled may be especially powerful in schools serving low-income populations. In cases where a child is under-achieving at school because of economic disadvantage, compensatory educational programs are supposed to be funded through Title I of the Elementary and Secondary Education Act (ESEA), not through the IDEA.[14] Indeed, economic disadvantage as a reason for under- or low-achievement is an explicit exclusionary criterion under the IDEA. However, because IDEA funds do not substitute for funding under Title I, students in low-income school districts who are also identified as disabled are effectively "double counted"—once for purposes of drawing down funds under Title I and a second time for purposes of reimbursement for special education services under the IDEA. In essence, low-income, low-achieving students can be "two-fers" when it comes to maximizing the procurement of federal and state funds. (See Box 1.)

The incentive to over-identify low-achieving children as disabled may be especially powerful in schools serving low-income populations.

A fourth reason for the growth in special education may be recent education reform efforts aimed at holding schools more accountable for student outcomes. Until recently, students identified as receiving services under special education were not generally required to participate in statewide assessments.[15] Given that merit raises, promotions, and bonuses for both principals and teachers often ride on the results of statewide exams, the temptation exists for local school districts to raise their scores artificially by excluding the participation of low-achieving, special education students in statewide assessments. Although the 1997 amendments to the IDEA were intended to prohibit this practice, three states that recently enjoyed large gains on national reading tests (Kentucky, Louisiana, and South Carolina) also evidenced large increases in the percentage of special education students excluded from taking the tests.[16]

A final reason for the growth in the number of children in special education comes from a surprising source: parents themselves. Not long ago, being in special education carried with it a certain amount of social stigma. Today, due in large part to the success of disability advocacy groups, there is much less stigma attached to special education. Indeed, what special education brings with it today is the possibility of such attractive accommodations and special programs as the assistance of a personal tutor, a lap-top computer, extra or even unlimited time on classroom tests and college entrance exams, a personal note taker, and immunity from severe discipline when the student violates behavior codes because of his or her disability.

The fact that being found eligible for special education brings with it entitlement to an array of often expensive services and accommodations may help explain why nearly one in three high school students is officially designated as disabled in affluent Greenwich, Connecticut.[17] It may also explain why clinicians in affluent communities frequently report an upsurge in parental requests for diagnostic evaluations, especially for SLDs and ADD, of high school juniors—just as high school students are preparing to take college entrance exams such as the SAT and ACT. Indeed, while children from families with more than $100,000 in annual income account for just 13 percent of the SAT test-taking population, they make up 27 percent of those who receive special accommodations when taking the SAT.[18]

In addition, an entire industry of professionals and paraprofessionals has arisen dedicated to identifying learning disabilities and assisting parents in obtaining mandated services. Educators and psychologists who provide private testing, attorneys who specialize in special education law, and parent advocates who help families negotiate the maze of special education services all thrive in affluent communities and are frequently the most forceful advocates for special education placement and accommodations.

Box 1: The Low-IQ, Low-Achieving Student

Most regular and special education administrators recognize that one type of child is inadequately served by both systems: the child with a low IQ score, but not low enough to qualify him as mentally retarded. By the sixth grade, these children are often two to three years behind their peers academically and cannot keep up with the more complex work of middle and high school. However, they do not meet the criteria for a learning disability classification, which requires that there be a significant discrepancy between achievement and intellectual ability, because both their IQ and achievement scores are low.

With luck, these students are passed on until they can be admitted to a high school level vocational education program, where they often thrive for the first time in their academic careers. Some schools bend the classification rules and label these children as learning disabled or mentally retarded and, in doing so, create a reasonably successful program for them by combining traditional special education services with vocational training. Others are not so lucky. After repeated school failure and perhaps several grade retentions, they often choose to drop out of school as soon as it is legally permissible.

Source: W. Douglas Tynan and Roberta [illegible], "Minutes from Quarterly Joint Meeting on Coordination of Services of Central Susquehanna Special Educators and the Department of Pediatrics, Geisinger Medical Center, Danville, PA" (November 1999).

Increasing Costs of Special Education

A second, and related, unintended consequence of the IDEA is the skyrocketing cost of special education, often at the expense of regular education. (See Table 3.) According to the National School Boards Association, the per-pupil cost of special education is 2.1 times the cost of regular education. Considering that the average per-pupil expenditure in the United States is about $6,200, the average cost for students in special education is $6,200 x 2.1, or approximately $13,000 annually.[19] Hence, the average excess cost of special education (the amount spent over and above the $6,200 spent in regular education) is about $6,800 per

Table 3: IDEA, Part B, Section 611 Grants to States Program: Funds Appropriated (1977-2000)

Appropriation Year	IDEA, Part B Section 611 Grants to States	Per Child Allocation
1977	$251,770,000	$71
1978	566,030,000	156
1979	804,000,000	215
1980	874,500,000	227
1981	874,500,000	219
1982	931,008,000	230
1983	1,017,900,000	248
1984	1,068,875,000	258
1985	1,135,145,000	272
1986	1,163,282,000	279
1987	1,338,000,000	316
1988	1,431,737,000	332
1989	1,475,449,000	336
1990	1,542,610,000	343
1991	1,854,186,000	400
1992	1,976,095,000	410
1993	2,052,728,000	411
1994	2,149,686,000	413
1995	2,322,915,000	418
1996	2,323,837,000	413
1997	3,790,213,633	535
1998	4,293,796,632	544
1999	4,310,700,000	545
2000	4,989,000,000	624

Sources: U.S. Department of Education, Office of Special Education Programs, *Twentieth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (Washington, DC: U.S. Department of Education, 1998), Table III-2, p. III-43, and updated data; also information from Data Analysis Systems (DANS) and the Office of the Under Secretary, U.S. Department of Education.

pupil. Because the IDEA covers 6.1 million children ages 3-21 years, the total cost of special education for these children is $79.3 billion, which is $41.5 billion more than the cost of regular education for this group of children.

Under the IDEA, the federal government is supposed to pay 40 percent of the costs of special education. In reality, federal funding has never exceeded 12.5 percent of the costs of special education.[20] Today, Washington provides well over $5 billion in total funding to local school districts, or about 12 percent of the costs of special education. On average, states pay 56 percent of the costs, with a range of 11 percent to 95 percent.[21] The remaining 32 percent is paid for by local school districts. Thus, the IDEA is perhaps the largest unfunded federal mandate for education ever placed on state and local government.

Making matters worse, because special education, unlike regular education, is a federal mandate, schools can be sued for not providing services that parents think their child deserves once he or she is identified as in need of special education. This has led some school districts to spend extraordinary sums on special education placements, services, and accommodations in order to avoid even more costly lawsuits.[22]

Indeed, special education is now the largest categorical program in public schools. The District of Columbia, for example, spends almost a third of its total education budget on the 10 percent of its students who are in special education.[23] Overall, the Economic Policy Institute estimates that each year special education absorbs 38 cents of every new tax dollar raised for the public schools.[24]

A particularly expensive result of qualifying a child for special education is the possibility that, in doing so, a public school may be obligating itself to pay for all or part of a child's private school tuition. In fact, public school districts today pay for the private school tuition of more than 100,000 special education students at an estimated cost of $2 billion annually and part of the cost of private school for an additional 66,000 special education students.[25] An extreme example of this is the case of one southern California school district that reportedly pays for a severely brain-injured boy to attend a specialized school in Massachusetts, flying his parents and sister out for regular visits, at a total annual cost of $254,000.[26]

For many in special education the goal can—and should—be independence rather than a lifetime dependence on special accommodations, often at taxpayers' expense.

The problem with escalating costs is that they may lead to a weakening of public support for special education. As ever-increasing numbers of children are determined eligible for ever more expensive special education placements, services, and accommodations, there may be a gradual erosion in the public's confidence in the entire special education system. Indeed, a recent Phi Delta Kappa/Gallup poll found that 65 percent of parents say that the extra attention paid by instructors and classroom assistants to disabled students comes at the expense of their own children.[27]

Training for a Lifetime of Entitlement

A third major problem with special education today is the application of an accommodation model to low- and under-achieving students who may benefit more from prevention, intervention, and compensatory strategies. When initially passed in 1975, the EAHCA was largely intended to ensure that students with significant physical and sensory disabilities were not denied a free appropriate public education. For these students, the appropriate intervention was, and remains, the provision of special accommodations such as access ramps for those using wheelchairs, books written in Braille for the blind, and sign language interpreters for the deaf to make public education accessible. There was no expectation that special education would, by itself, ameliorate the physical or sensory handicap, thereby making these special accommodations no longer necessary. It would be ludicrous, for example, to argue that a goal of special education ought to be to make deaf students hear or blind students see.

There are, however, certain subgroups of students with disabilities for which it is reasonable to expect that special education will help them overcome or compensate for their handicapping condition so that they no longer need special services or accommodations. Special education should, for example, work to ameliorate emotional and behavior disorders, so that students with these disorders no longer need alternative placements. Similarly, when working with students with SLDs, ADD, and ADHD, the goal should be to help these children learn self-directed compensatory strategies so that they can succeed without the aid of special services or accommodations. In other words, for many in special education the goal can—and should—be independence rather than a lifetime dependence on special accommodations, often at taxpayers' expense.

Unfortunately, special education has largely failed to help most special education students achieve such independence. Instead, most children determined to be in need of special education under the IDEA can expect to receive special education services and accommodations until they leave school. In fact, according to data collected in 1993 by the Department of Education from 16 states, only 1 to 12 percent of special education students over the age of 14 years are declassified each year.[28] Other developments, such as accommodations provided under the Americans with Disabilities Act, surely reinforce the tendency toward permanent accommodations for disabilities, even those that can be remediated.

Little attention is paid by federal accountability systems to whether students in special education are advancing in core subjects or acquiring the skills necessary for making special education and accommodations no longer necessary.

A focus on process not outcomes. Contributing further to this problem is the fact that accountability within federal and state systems focuses on due process requirements and fiscal management rather than educational outcomes. Hence, local schools are told they are "doing it right" if they provide appropriate eligibility assessments, hold timely IEP meetings, provide parents with appropriate procedural safeguards, and draw down funds appropriately. Little attention is paid by federal accountability systems to whether students in special education are advancing in core subjects or acquiring the skills necessary for making special education and accommodations no longer necessary.

There is even a question as to whether many of the accommodations typically provided to special education students are doing what proponents advocate. For an accommodation to be useful, it should demonstrate "differential advantage" for special education students. That is, the accommodation, whether it be giving extended time to complete a test, allowing students to have the instructions and test questions read aloud to them, or providing large print or Braille forms of the test, should improve the scores of students with disabilities above and beyond improvements that students without disabilities might achieve if they were provided with the same accommodation.

We know, for example, that the use of large print does give a differential advantage to students with vision impairment. That is, if students with vision impairment and those without take the same large-print test, scores are comparable. If they take a standard small-print test, those with vision impairment do worse. The purpose of providing an accommodation is not simply to raise test scores, but to level the playing field so that students with and without disabilities have an equal opportunity to demonstrate their skills and knowledge.

Unfortunately, some accommodations routinely provided to special education students have not demonstrated such differential advantage. Take, for example, the provision of extra time to take tests. According to research by Lynn Fuchs and her colleagues at Vanderbilt University, giving more time on conventional math and reading tests does not help grade-school students with learning disabilities any more than it does non-learning disabled students, although it may provide a differential advantage on more complicated math tests that require extensive reading and writing.[29] Moreover, although studies by the College Board have found that providing extended time on the SATs increases the scores of students with learning disabilities by an average of 45 points on verbal and 38 points on math, no studies have yet been done to determine whether giving more time on the SATs satisfies the requirement for differential advantage.[30]

What the provision of special accommodations does seem to accomplish is teaching students in special education that they are entitled to operate under a different set of rules than everyone else.

Another way to determine whether an accommodation is appropriate is to examine its effects on the test's predictive validity: for example, the extent to which an accommodation enhances or reduces the ability of the test either to predict an outcome or to measure the underlying ability it was designed to measure. One danger in providing accommodations to special education students is that in so doing the test may no longer validly assess the ability or skill it was designed to measure or predict the outcome it was designed to predict.[31] This seems to be the case for at least some accommodations routinely provided to special education students. Research has generally found, for example, that giving students with learning disabilities extra time on the SAT tends to predict greater college success than these students actually achieve.[32]

Two sets of rules. What the provision of special accommodations does seem to accomplish is teaching students in special education that they are entitled to operate under a different set of rules than everyone else. Nowhere is this more evident than in how school disciplinary rules are differentially applied to students in special education compared to those in regular education.

According to the "stay put" provisions of the IDEA, once placement in special education has begun it can only be changed by a child's IEP committee. If the student's parents do not consent to a change in placement and request a hearing, the student must "stay put" in the current placement until the hearing process is concluded. Suspensions that last longer than 10 days (or have the cumulative impact of more than 10 days) and expulsions are both considered changes in placement and hence are prohibited under the "stay put" provisions of the IDEA.

There are two exceptions to this. First, disciplinary sanctions of 10 days or less are not considered a change in placement and consequently are not subject to this restriction (although if the current suspension combined with earlier suspensions would total over 10 days, the student could not be suspended). Second, a school can propose disciplinary sanctions greater than 10 days or expulsions if it believes the misbehavior is not related to the disability. If, however, the parent disagrees and requests a hearing, the student must "stay put" in his or her current placement until the hearing is held.

> ***Many students with disabilities who have grown used to special accommodations in primary and secondary schools are confronted with a harsher reality when they enter college or the workforce.***

The "stay put" provision can lead to a situation in which two students, one in regular education and the other in special education, both bring weapons or an illegal substance to school, yet only the student in regular education is suspended or expelled. It is true that a special education student can be suspended or expelled for weapons or drug violations if the behavior is unrelated to his or her disability. But it is very difficult to argue that such behavior is unrelated to a student's disability if, for example, that student was diagnosed with an emotional or behavioral disorder.

This situation is not merely hypothetical. Several years ago, a group of six Fairfax County, Virginia, students brought a .357 magnum handgun onto school property. Five of the students were expelled. The sixth was not. The reason? He was classified as "learning disabled" with a specific weakness in "written language skills." The special education student later bragged to teachers and students at the school that he was immune from expulsion.[33]

Unfortunately, this is not an isolated episode. In another case, also in Fairfax County, five gang members used a meat hook to assault another student. Only three of the perpetrators were expelled. The other two were special education students. When Virginia Governor George Allen tried to challenge the wisdom of using federal law to protect violent special education students, the Clinton administration threatened to pull millions of dollars in federal education dollars from the state.[34]

Due to these and other examples of problems arising from the "stay put" provision, in 1997 Congress passed amendments to the IDEA giving schools a little more latitude in disciplining violent special education students. For example, in situations involving a "substantial likelihood" of injury, a hearing officer may unilaterally place a student involved with weapons or drugs in an alternative educational setting. For this to occur, however, the school must show that it made reasonable efforts to minimize the risk of harm in the current placement, "including the use of supplementary aids and services." Furthermore, if the recommendation is expulsion, the IEP team must conduct a review to determine whether the misconduct was a manifestation of the child's disability. If so, no expulsion.

These qualifications continue to ensure that special education students will be treated differently in cases of serious violations of school rules compared to regular education students. Indeed, in April 1999, the National School Boards Association urged federal lawmakers to make further amendments to the IDEA to provide greater flexibility to suspend, expel, or reassign students whose misconduct jeopardizes safety or unreasonably disrupts classroom learning.[35]

Losing sight of the "end game." The end result of special education's focus on process rather than outcome, accommodations rather than prevention and intervention, and exceptions to disciplinary codes rather than uniform enforcement is encouragement for special education students to see their disability as rationale for a lifetime entitlement to special accommodations. Unfortunately, this expectation brings its own negative consequences. For example, although it is true that many colleges offer accommodations to students with disabilities under Section 504 of the Rehabilitation Act, the extensive supports of special education required under the IDEA generally do not apply to colleges and universities. Consequently, many students with disabilities who have grown used to special accommodations in primary and secondary schools are confronted with a harsher reality when they enter college or the workforce.

Take, for example, the case of *Bartlett v. New York Board of Law Examiners*. In this case, Marilyn Bartlett, a former special education student who had failed the New York bar exam several times, argued that she was entitled to unlimited time to take the bar exam because her reading disorder qualified her for special accommodations under the Americans with Disabilities Act. The U.S. Second Court of Appeals ruled that she was not entitled to unlimited time to take the bar exam because, as evidenced by the fact that her standardized reading test scores were in the average range, she had successfully compensated for her reading disability.[36]

What this and other cases illustrate (see Boxes 2 and 3) is that special education has largely lost sight of the appropriate "end game." Special education laws were originally intended to integrate children with special needs into the mainstream of American life. Today, however, special education in far too many instances serves to separate, not integrate, through the use of special rules and procedures not available to non-disabled students. In these instances, special education has ceased to see its mission as teaching compensatory and coping skills so that students are empowered to participate fully in the mainstream of American society, and instead it seems focused on encouraging a sense of lifetime entitlement to special accommodations.

As Robert Sternberg, IBM Professor of Education at Yale, has pointed out, we could decide to offer special accommodations throughout the student's life, but are we prepared to have professional note-takers for judges, attorneys, or physicians?[37] With the number of persons believed to have learning disabilities approaching 20 percent of the population, can society afford this canopy of protective services and accommodations? Even more importantly, by accommodating their weaknesses, we are ignoring their areas of intellectual strengths. As such, special education is training these students to work in fields that will be difficult for them rather than allowing them to discover the areas in which they may have special competence.

Box 2: Nicholas P. v. Andover Academy

A particularly illustrative example of the way special education encourages dependence, rather than independence, is the case of Nicholas P. and the Phillips Academy in Andover, Massachusetts. Nicholas had scored 14[illegible]0 on the SAT and was a National Merit Scholarship finalist, both accomplished without any special accommodations during testings. But because Nicholas had been in therapy and on medication for ADHD since he was five, the school provided him with extra time on some tests and opted him out of its third-year foreign language course, among other special accommodations.

When Nicholas began to fail at school, Phillips Academy told him to remove his stereo, telephone, and computer games from his dorm room. Nicholas refused and his grades continued to decline. When the faculty voted 168-2 to require him to withdraw from school, he sued. His attorneys argued in a federal district court that the fact that he has ADHD made it not only unfair but also illegal for Andover to flunk him out. The school defended itself in court papers asserting, "Allowing students to pick and choose only the portions of a syllabus he finds interesting enough to read, and hand in written assignments late when it suits him, would fundamentally alter, not to mention lower, the Academy's stringent academic requirements."

U.S. District Judge Edward F. Harrington, who heard the case, eventually ruled that Nicholas' problem was not ADHD, but laziness. His ruling blamed "a willful lack of effort on [Panagopoulos'] part, invariably excused by a parent who indulged this lack of discipline and who failed to support the school in its efforts to assist him to do his work."

Source: [illegible] with Bad Attitudes Act," *The American Enterprise* (May/June 1999): [illegible]

Ultimately, then, the true victims are the students themselves. By teaching special education students that there are two standards—one for them and one for everyone else—they are being encouraged to rely upon special accommodations rather than being challenged to achieve at high levels. In so doing, we run the risk of failing to integrate those with special needs into the mainstream of American life, as we shunt them off into a different room in which different rules apply and standards are forever lowered.

Recommendations for Reform

Reforming special education so that it is better targeted, more cost-efficient, and more effective in improving the educational outcomes of students with disabilities requires three things. First, policymakers should recognize that special education, as currently comprised, is really made up of three distinct subpopulations of students, each with very different educational needs. Second, change the funding structure for special education so that it rewards schools for improving the educational outcomes of students with disabilities and not just for identifying and serving them. Third, re-commit special education to helping students overcome their disabilities and to teaching coping and compensatory mechanisms,

Box 3: Elizabeth Guckenberger, et al. v. Boston University

This case also tested the limits of the special accommodations that colleges and universities are required to make in response to demands from students with disabilities. This case involved a class action suit brought against Boston University (BU) by a group of students identified as having ADHD, ADD, and various learning disabilities. The group made three claims against BU. First, the University was establishing unreasonable criteria by which students would qualify as disabled. Second, BU failed to provide reasonable procedures for reviewing student requests for accommodations. Third, BU prohibited across the board course substitutions in the area of foreign languages and mathematics (for students claiming disabilities in those areas).

Prior to 1995, BU was considered to be a leader in providing services to students with learning disabilities. For example, in brochures distributed to high schools, BU advertised the availability of such services as note-taking assistance and extended time on examinations. Course substitutions were also routinely allowed for mathematics and foreign language so that a course on the "Anthropology of Money" could be substituted for a mathematics course, or a foreign culture course could be substituted for a foreign language class. As a result, the number of entering students self-identified with learning disabilities rose from 42 in 1990 to 429 in 1995.

Following an internal review of these policies in 1995, Jon Westling, then provost of the university, changed the criteria for disability to include current evaluations (less than three years old) by a doctoral-level specialist (previously a letter from any therapist would suffice). Westling also implemented a review of all supporting materials and announced that course substitutions would no longer be available to students with disabilities. These announcements caused great upheaval within the student body and resulted in several staff resignations in the Learning Disability Program. Guckenberger, a law student with a well-documented reading disability who had been provided the note-taking, test-taking, and reduced semester credit-hour accommodations throughout her years at BU and who did graduate, nevertheless sued the University because of the emotional problems caused by this upheaval in the Learning Disability Program.

The court's ruling focused on three main points. First, the court ruled that whereas a master's-level evaluator could diagnosis learning disabilities, BU could require that a doctoral-level provider make a diagnosis of ADD or ADHD. Second, it was unfair to require students like Guckenberger to go through policy changes after school entry without advance warning. Third, federal law does not require a university to modify its degree requirements by permitting course substitutions.

Although the University did have to pay some modest sums to the students involved, the message from the court was clear that, even though accommodations necessary to complete course work, such as note taking services, could be required, course work and scholarship requirements for a degree did not have to be altered. In essence, the court limited the amount of special accommodations that colleges and universities are required to make in response to the requests of students with disabilities.

Sources: Robert J. Sternberg and Elena L. Grigorenko, Our Labeled Children (Reading, MA: Perseus Books, 1999); see also a series of articles on Guckenberger v. Boston University in the Journal of Learning Disabilities 32 (July/August 1999): 286-361.

whenever possible, rather than teaching such students to expect a lifetime of special accommodations and services.

Disentangling Special Education Sub-populations

The first step in special education reform is to recognize that the system currently serves three very distinct populations: (1) those with significant developmental disabilities and sensory and physical handicaps; (2) those with milder forms of neurological conditions, such as learning disabilities and ADD; and (3) those with conduct or behavioral problems.

Children with significant sensory, cognitive, and physical disabilities. The first group is comprised of students with a significant need for special education services and accommodations. This is the group for whom the original law was passed. These are children born with birth defects, serious sensory or physical disabilities, and significant cognitive delays. In the vast majority of such cases, these children will have been identified as disabled during infancy and preschool years, frequently by health-care professionals or early childhood education specialists, and they will already have begun receiving intervention services before they enter elementary school. For these children, there is no need for an elaborate identification process within the schools. Long before they enter kindergarten, we know who they are, and, to a large extent, we know their medical, rehabilitation, and educational needs.

Within a system of classification designed to define the educational needs of children (rather than merely provide a diagnosis of disabilities), emphasis would be placed on monitoring the progress for each child in a realistic fashion.

The key to educating these students is to fund adequately appropriate accommodations (for instance, interpreters for the deaf, curb cuts for those in wheelchairs, books written in Braille for the blind, and so forth), while including them to the maximum extent possible in the education mainstream. To a very large extent, this is what special education currently provides these students. Nevertheless, certain changes can—and should—be made to enable special education to more effectively and efficiently serve these students.

Although these students currently are placed in several different categories under the IDEA, and often are labeled "multi-handicapped," the official categories generally are not associated with different types of school placements. It is not unusual, for example, for a special education classroom at the elementary school level to include children categorized as autistic, speech and language delayed, and mentally retarded, all with the same teacher and classroom curriculum. Given the similarity in actual placement for these students, it would be more efficient to include them in one category, simply as children with significant special needs, rather than going through the current costly and time-consuming diagnostic and categorization process.[30]

Once a child is identified as having significant special needs, emphasis would then be placed on developing a functional curriculum for that child, including inclusion in the education mainstream to the maximum extent possible. Subcategories designed to help identify specific needs and for tracking purposes would be used as descriptors of each child's needs, rather than as a quasi-diagnostic tool. Thus, a child born blind and deaf and thought to be mentally retarded would be classified as a child with significant special needs, with the subcategories of blindness, deafness, and mental retardation. In this way, children with milder versions of a particular disorder (for example, mild autism or Asperger Disorder) who can function quite well in a standard classroom with minimal levels of assistance are not confused with those having a more severe form of the same disorder who may need high levels of service.

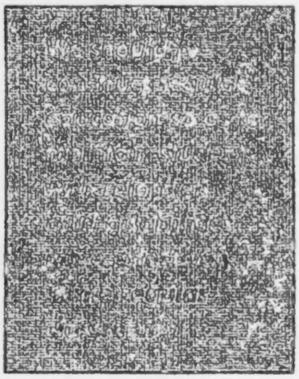
Within a system of classification designed to define the educational needs of children rather than merely provide a diagnosis of disabilities, emphasis would be placed on monitoring the progress of each child in a realistic fashion. A functional analysis of each child's needs would be completed, and realistic, achievable, and measurable goals would be set forth in each child's IEP. Given that many children with significant special needs will require special services and accommodations even into adulthood, the focus of special education curricula for these students would be the development of skills necessary for daily living and vocational training.[39] Schools would be held accountable for failures to progress in targeted areas of the curriculum. Thus, for example, in the case of an autistic child who cannot communicate and fails to improve after a year in school, that lack of progress would be a signal for the school to change the curriculum approach or an opportunity for the parents to change schools.

Some early reading specialists assert that reading disabilities are the result not so much of neurological dysfunction as of how most schools currently teach reading.

A renewed emphasis on skill development may also affect where children receive their education. The 1997 amendments to the IDEA emphasized inclusion. Although this is often helpful, it should not be done at the expense of the child's overall progress. Thus, a deaf student in a small town that has difficulty hiring staff who are expert in sign language may be more appropriately served by attending a residential school for deaf children for at least some period of time during which the student can become fluent in sign language. In many handicapping conditions, particularly disabilities affecting language development, there is a sensitive period for the development of specific skills, a window of opportunity for skill development that should not be missed. Many children with significant disabilities would benefit from intensive work for one or two years in a separate program, followed by more intensive efforts toward inclusion.[40]

Although comprising fewer than ten percent of all children in the special education system and less than one percent of all children in school,[41] students with significant developmental disabilities and sensory and physical handicapping conditions do have very special needs and are more expensive to educate. Indeed, it is these children who 30 years ago were largely excluded from the public schools. The right of these students to have access to a free appropriate public education must be maintained under any change to the current structure of special education services and accommodations.

Children with neurological dysfunction. The second, and by far the largest, group of students currently in special education is comprised of those with mild forms of neurological dysfunction, such as mild mental retardation, learning disabilities, and ADD. The first question that needs to be addressed concerning this subgroup of special education students, especially given the emphasis under the 1997 IDEA amendments for inclusion of these students in the regular classroom, is what is so "special" about the special education they receive?



In many cases, the answer is not much, except for the fact that they are classified differently from their peers. In terms of the educational strategies most likely to enhance their educational outcomes, the majority of research finds that those strategies most effective with this group of students are the same strategies that are helpful to most students in regular education. This includes approaches such as frequent individualized monitoring and feedback, and intensive direct instruction. What this group of special education students needs is not so much different interventions but good teaching, albeit perhaps with greater consistency, intensity, and slower pacing than other students require.[42]

Thus, rather than perpetuating the myth that students with relatively mild disabilities are receiving a different kind of instruction compared to non-disabled students, we should re-construct regular education so as to maintain these students more effectively in the regular classroom. Indeed, Robert Sternberg and Elena Grigorenko of the Yale Child Study Center, as well as G. Reid Lyon of the National Institutes of Health, assert that reading disabilities, the most common form of learning disability, are the result not so much of neurological dysfunction as of how most schools currently teach reading. If all schools were to teach phonological awareness, sound-symbol relationships, and reading comprehension, and did so effectively and early, most reading problems could be avoided, say these early reading specialists. For those relatively few children who develop reading problems despite this approach, the regular education teacher could implement in-class interventions, perhaps with the assistance of a reading specialist. In this way, reading problems would come to be perceived as a regular education function, rather than being referred to special education programs.[43]

This approach is in marked contrast to the current system which emphasizes identification rather than intervention and has curiously little involvement by the classroom teacher. If, for example, a child is falling behind in reading, under the current system a referral is made for testing his or her reading level and establishing an estimate of his or her IQ. A psychologist and a reading specialist typically do this evaluation, not the teacher who teaches the child each day. From the start, the process is largely disengaged from what goes on in the classroom.

An alternative model would involve a functional analysis of reading done by the teacher, perhaps with the help of a psychologist and reading specialist. Instead of being concerned with documenting an IQ-achievement discrepancy score, time would be spent analyzing the particular reading problem. By reviewing actual classroom reading samples, supplemented by some additional testing materials, factors involved in the reading process such as motivation, phonemic processing, vocabulary level, reading rate, and the ability to self-correct errors could be assessed in far less time and with far less expense than the current system of formal educational and IQ testing.[44]

Under this model, the classroom teacher would remain responsible for the child's progress and would work along with reading specialists to construct in-classroom interventions to enhance the child's reading ability. If, for example, a child was found to have a poor reading vocabulary, an intervention would be designed to increase his or her vocabulary, with an assessment to be done six weeks later to determine the child's progress toward an expanded reading vocabulary. The emphasis in this model would be on helping the child develop, through active precision teaching, the skills and coping mechanisms necessary to achieve at higher levels in school. Progress would be gauged by regular academic outcome standards with the goal of empowering the student, not simply accommodating his or her disability.[45]

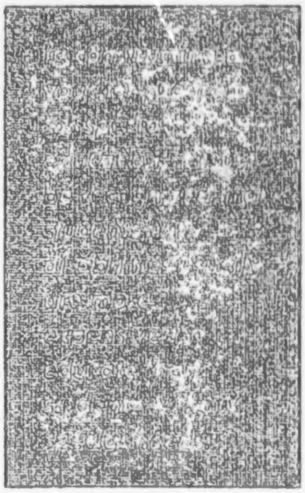
A similar approach could be used for children with ADD and ADHD. In a recently published large-scale treatment study of students with ADHD,[46] the best outcomes were found for those children who received a combination of relatively low doses of medication, a classroom behavior modification program, and behavioral family therapy to help parents better manage their child's home behavior. Rather than being taught to rely on medication to manage their symptoms, the children in the combination treatment were systematically taught, both at home and in school, the skills necessary to maintain behavioral control even in the absence of medication. These results suggest that students with ADD and ADHD would benefit more if schools would structure their environments more clearly, with obvious rules and boundaries and clear consequences for good and bad behavior, rather than relying on medication alone to enhance educational outcomes.

In such a revised setting, accommodations would be reviewed to make sure they are designed either to help the child develop compensatory skills or to allow the child to perform at a higher level. Thus, if we start by writing down homework assignments for a child who has difficulty remembering to write them himself, an appropriate education plan would include eventually having the child write down assignments himself. The goal of the curriculum, then, would be to teach compensatory skills, not an expectation for endless accommodations.

Effective treatment of these disorders involves making these individuals strictly accountable for their behavior, insisting on compliance with requests and helping them learn to cope calmly with stressful situations.

Children with behavioral problems. The third major sub-group of students currently receiving special education services and accommodations is comprised of those with conduct or behavioral problems. Students with these types of disorders, when seen in the mental health system, are usually diagnosed as having either oppositional defiant disorder or conduct disorder, characterized by refusals to comply with requests, emotional overreaction to stressful situations, and failure to take responsibility for their own actions.

Effective treatment of these disorders involves making these individuals strictly accountable for their behavior, insisting on compliance with requests and helping them learn to cope calmly with stressful situations.[47] Unfortunately, once these students are identified as in need of special education, many of the accommodations routinely provided them—and most especially a lowered standard of acceptable behavior—actually work to undermine these desirable goals. This sets up these students for later failure as they frequently come to expect the same kinds of accommodations outside the school as well. Unfortunately for these students, systems external to the school, such as the criminal justice system and the job market, are far less accommodating to disruptive and non-compliant behavior.



An alternative approach would be to develop school- and system-wide interventions designed to reduce these problems overall, rather than classifying and then segregating individual students. For example, in a series of interventions carried out by the May Institute in New England, considerable improvement in behavior and reduction in behavior-related referrals for special education were achieved efficiently and economically. In one city, a school-wide program to reinforce compliance with rules resulted in a 40 percent drop in detentions. In a second, the need for special education placements was reduced almost three-fold after implementation of a positive reinforcement program for rules compliance at a cost of less than $10 per year per child. A third school-wide intervention resulted in a 30 percent reduction in disciplinary referrals to the principal after a program incorporating positive reinforcement for compliance plus close monitoring of behavior was implemented at a cost of only $30 per elementary school student.[48]

For those students who persist in defying rules despite such interventions, it is questionable whether they should be included within the framework of special education at all. It is a fine line between a psychiatric disorder that can be treated and criminal behavior that should be adjudicated, and the distinction is even more difficult in the high school years.

Reforming Special Education Funding

Currently, schools draw down special education funds based on the number of students identified as having a qualifying disability under the IDEA. As noted earlier, this creates an incentive to identify low-achieving students. If the current system resulted in substantial improvements in educational outcomes for these students, there would be no necessity for reform. But evidence is mixed at best as to whether student performance is enhanced once they are placed in special education.[49]

One reform being advocated by some is a move to census-based funding for special education. Under such a scheme, funding for special education would be based not on the number of children identified as in need of special education, but on total student enrollment. Census-based funding has the advantage of providing schools with the flexibility to set up schoolwide interventions. (Although the 1997 amendments to the IDEA allowed some movement in this direction, identification and classification remain the focus of the system.) Critics, however, worry that census-based funding provides schools with little incentive to provide the more expensive accommodations and services needed by the severely disabled and that it does not necessarily result in better outcomes for students with disabilities.

Moreover, census-based funding does not take into account real differences that may exist across school districts in the percentage of students with severe disabilities requiring intensive special education services. This can happen, for example, when parents of children with severe disabilities move into a school district with greater proximity to a specialized medical facility, resulting in an over-representation of such students in that school district. Or a quirk of fate can cause an over-representation of students with severe disabilities in some school districts. For example, a small Pennsylvania school district of only 400 K-12 students includes a pair of severely autistic twins and a child with a severe head injury. Under census-based funding, such districts would be unfairly penalized financially.

One approach to deal with the issue of low-frequency, high-need children would be to have schools identify that relatively small group of children who have severe special needs, then let state governments help fund local programs for this population. Another approach would be to attach funding to students identified as in need of special education through the use of vouchers. Parents could use the voucher to pay for both the evaluation process and the specialized educational experience of their choice. This could be done either within, or independent of, a broader school voucher program.

> [illegible]

In constructing a voucher program for special education, it must be recognized that students with disabilities usually are more expensive to educate than students without special needs. Too often, voucher advocates have assumed that every student, regardless of educational needs, would receive vouchers of equivalent value. Without taking into account the fact that students with disabilities frequently cost more to educate successfully, students with disabilities might be placed at a disadvantage relative to other students participating in a voucher program. The obvious solution is to tag the value of special education vouchers to the average estimated cost of teaching a student with a specified disability.

The use of vouchers also would help reduce the current adversarial nature of special education. By providing parents with choice at the outset, for example, there would be no need for an extensive appeals process. If a child were failing in regular education and an assessment needed to determine why, the parent would have the choice of having the evaluation done at school or by an independent expert who accepted vouchers. Parents could then seek schools that are most effective at teaching students with their child's particular type of disability. Market pressure would be placed on education programs to produce positive results since parents could always move their child to a different program or provider the following year.

Parents should also be allowed to use special education vouchers to pay for the costs of vocational education programs, one of the more successful education interventions for high school students with disabilities. According to the National Longitudinal Transition Study of Special Education Students, students with mild disabilities who took a concentration of vocational courses were 40 percent more likely to be competitively employed after high school than their peers who did not take a concentration of vocational courses, and they earned an average of $6,247 more annually. Those who took only survey courses in vocational interests still earned nearly $4,000 more per year.[50] Yet vocational education is an under-utilized intervention for many students in special education today.[51]

> Federal legislation [illegible] should be [illegible] important principle. It is now time to ensure that principle actually translates into [illegible] outcomes for [illegible] with special needs.

In addition to vouchers for individual students, federal and state special education grants to schools should be made contingent upon educational improvements by the subgroup of special education students with neurological dysfunctions as measured by independent tests. This contrasts sharply with current accountability mechanisms which are focused on process (for example, was an IEP developed, and were parents informed of their due process rights?), not outcomes (for example, did the child's academic skills improve?).

Absent a voucher system, one possibility for holding schools more accountable for outcomes is to base funding on the number of students who achieve the goals set forth in their IEPs. This, however, may simply result in the "dumbing down" of students' IEPs by setting very low educational goals. An alternative would be to use the current statewide assessment tests and differentiate the scores of students in regular education from the scores of students in special education. Under the assumption that the purpose of special education is to improve the academic performance of these students, schools would be held accountable for measurable gains over time in the special education population relative to those in regular education.

Empowerment, not Entitlement

Disaggregating the needs of the three major sub-populations currently in special education together with reform of the funding mechanism would go a long way toward improving the educational experience of students with disabilities. Both of these reforms, however, would ultimately prove inadequate if, at the same time, special education did not also reorient itself toward helping students compensate more effectively for their disabilities so that they can be better integrated into the mainstream of American life.

As discussed earlier, special education seems to have lost sight of the appropriate end game. Rather than viewing its mission as helping students with disabilities overcome, or at least effectively compensate for, their disabilities, special education has become a training ground for a sense of entitlement to a lifetime of accommodations. Unfortunately, students grown accustomed to special accommodations during schooling often find themselves at a distinct disadvantage later in life when employers are less likely—or able—to provide them with similar accommodations in the workplace.

We are not arguing that every disability is remediable, nor that every handicapping condition can be successfully compensated for. Rather, we argue that special education has over-generalized an accommodation model appropriate for students with severe physical, sensory, and cognitive disabilities to include students with behavioral disorders and milder forms of neurological dysfunction.

A major overhaul of special education is needed to ensure that the original goal of offering an appropriate education to all children is reached.

Instead, students with mild forms of neurological dysfunction, such as learning disabilities and ADD, should be taught how to effectively cope with their learning difficulties rather than demanding special accommodations. Doing so will require better differentiation between effective accommodations and lowered standards. For example, although taking a tape recorder to class to assist in note-taking is an appropriate coping mechanism, demanding the substitution of a course in "The Anthropology of Money" for a mathematics course is not.

Even more importantly, schools should cease classifying students with conduct problems under the IDEA. What these students need is to learn better self-control. The key to teaching self-control is not lowering behavioral standards, but developing clear and consistent rules, reinforcing positive behavior, providing immediate consequences for rule infractions, and the teaching of cognitive strategies for coping with high-stress situations. Indeed, in our desire to be compassionate with this population of students, we are inadvertently doing harm by teaching them that they are, in important ways, exempt from consequences that other students face when they misbehave. Moreover, as Abigail Thernstrom has argued elsewhere,[52] court decisions that multiply students' rights and restrict the ability of schools to exercise disciplinary powers have resulted in increasing disorder in the schools—limiting the ability of both disabled and non-disabled students to benefit from their educational experience.

Conclusion

Special education today is costly and, even worse, ineffective. The elaborate eligibility and classification systems set up in response to well-meaning federal legislation have not translated into improved outcomes for most students with special needs. Indeed, despite elaborately developed individual programs, over 90 percent of children in special education receive similar services.[53] Moreover, by focusing on weaknesses and accommodations, we have given these children unreasonable expectations of how the larger community will respond to their academic weaknesses. As a result, many special education students have a rude awakening in store for them when they arrive at college or enter the job market.

A major overhaul of special education is needed to ensure that the original goal of offering an appropriate education to all children is reached while at the same time ensuring that as many students as possible are integrated into the mainstream of American life. To accomplish this, we must first recognize that special education, as currently constructed, really serves three distinct groups of students: those with significant physical, sensory, and cognitive handicaps; those with milder forms of neurological dysfunction, such as SLD and ADD; and those with behavioral disorders.

A transformed special education system would continue to provide appropriate accommodations and special services to the first group designed, at least in part, to help integrate them as much as possible into regular education. For the second group of students, regular and special education would re-focus its efforts both to prevent academic problems through more effective instructional strategies and to teach compensatory skills so that, in the long run, these students are no longer in need of special accommodations or services. The third group, students with behavioral disorders, would be excluded from special education per se, and instead benefit from system-wide programs focusing on clear rules, positive reinforcement for appropriate behavior, and effective limit setting, all designed to prevent conduct problems in the first place. School choice, preferably in the form of vouchers, would ensure that parental preferences are respected.

A reformed education system would take into account the differing needs of important subgroups of special education students; empower parents, not lawyers; and encourage the development of coping and compensatory strategies, not a lifetime of disability. Federal legislation ensuring that no student be left behind is an important principle. It is now time to ensure that this principle actually translates into better outcomes for students with special needs. In short, it is time to make special education "special" once again.

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[1] U.S. Congress, Committee on Education and Labor, Select Subcommittee on Education, *Hearings*, 93rd Congress, 1st Session (1973).

[2] See Public Law 34-5 (February 16, 1857), "An Act to Establish the Columbian Institute for the Deaf and Dumb"; and Public Law 45-186 (March 3, 1879), "An Act to Promote the Education of the Blind."

[3] Public Law 85-804 (September 1958), "National Defense Education Act"; Public Law 85-926 (September 6, 1958), "An Act to Encourage the Expansion of Teaching in the Education of Mentally Retarded Children Through Grants to Institutions of Higher Learning and to State Educational Agencies."

[4] See Edwin W. Martin, Reed Martin, and Donna L. Terman, "The Legislative and Litigation History of Special Education," *The Future of Children* 6 (Spring 1996): 25-39.

[5] Procedural safeguards for the IDEA are delineated in the U.S. Code of Federal Regulations, Title 34, Subtitle B, Chapter III, Part 300.

[6] The 13 mandated special education categories are autism, deafness and blindness, developmental delay, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment.

[7] See Daniel J. Reschly, "Identification and Assessment of Students with Disabilities," *The Future of Children* 6 (Spring 1996): 40-53.

[8] See U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Annual Report to Congress on the Implementation of The Individuals with Disabilities Education Act*, (Washington, DC: U.S. Department of Education, various years); National Center for Education Statistics, Common Core of Data Survey, *Digest of Education Statistics, 1999* (Washington, DC: U.S. Department of Education, 2000), table 53; and unpublished tabulations.

[9] See Ami Klin and Fred Volkmar, "Asperger's Syndrome," in *Handbook of Autism and Pervasive Developmental Disabilities*, 2d ed., eds. Donald Cohen and Fred Volkmar (New York: John Wiley & Sons, 1997), 54-80.

[10] Between 1990 and 1993, the annual number of outpatient pediatric visits for ADHD increased from 1.7 million to 4.2 million. Moreover, production of methylphenidate, the most common pharmacological intervention for both ADD and ADHD, more than quadrupled during this same time period.

[11] Of particular concern is the difficulty distinguishing SLDs in reading, the most frequent form of which is often referred to as dyslexia, from low achievement in reading. Indeed, the National Institute of Child Health and Human Development consensus report on the subject concluded after reviewing all the relevant research on the

topic that it is impossible to clearly differentiate an SLD in reading from low achievement. Instead, these researchers concluded, "dyslexic children simply represent the lower portion of the continuum of reading capabilities." Cited in Daniel J. Reschly, "Identification and Assessment of Students with Disabilities," 45.

[12] Cited in Robert Worth, "The Scandal of Special Education," *Washington Monthly* (June 1999): 34-38.

[13] In a March 19, 1995, interview with *The Sunday Star-Ledger*, then-New Jersey Education Commissioner Leo Klagholz was quoted as saying, "We spend the money every year, but we have no way of knowing whether the money we spend is actually going for the education of disabled children." Klagholz concluded, "I'm not sure school officials actually sit around and say they can increase state aid by increasing the number of classified children. But the incentive is there and, sometimes, close calls can be justified on the grounds of the good they believe they are doing by increasing a district's resources." Robert T. Brown, "Klagholz Fears Schools Inflate Special Ed Need," *The Sunday Star-Ledger*, 19 March 1995.

[14] Under the 1997 amendments to the IDEA, schools are now allowed to use special education funds to explore programs that are non-categorical, are coordinated with other federal and state funded programs within the school, and are part of an educational "whole" (Part B funds). However, schools still get special education funds based on the number of children identified as eligible under the IDEA. What the 1997 amendments allow is greater flexibility in spending the money. So, for example, if a school defines a resource classroom for reading as one that has fewer than ten students and there are six children identified as in need of special education, the school can include four additional children in that resource classroom who are poor readers but not identified as in need of special education under the IDEA. The school doesn't receive any additional funds for the latter four students, however.

[15] A study conducted by the National Assessment of Educational Progress (NAEP), U.S. Department of Education, found that schools routinely tried to exclude low-achieving students from standardized exams by, for example, sending them on field trips, telling them to stay home, or simply encouraging them not to participate in the tests. Of the 27 states that routinely tracked how many students with disabilities participated in statewide assessments, only about half tested special education students.

[16] See Andrea Tortora, "Omitting Special Ed Kids May Have Aided Scores," *The Cincinnati Enquirer*, March 12, 1999.

[17] See Walter Olsen, "Under the ADA, We May All Be Disabled," *Wall Street Journal*, May 17, 1999, sect. A, p. 27.

[18] See Michael Cardman, "SAT Accommodations Soar for Wealthy, White Males," *Education Daily* 33, no. 10 (2000): 4.

[19] See "Special Education: Honoring the Federal Commitment," as posted on the National School Boards Association website: <<www.nsba.org/advocacy/issueupdates/idea.htm>>.

[20] See Donna L. Terman, Mary B. Larner, Carol S. Stevenson, and Richard E. Behrman, "Special Education for Students with Disabilities: Analysis and Recommendations," *The Future of Children* 6 (Spring 1996): 12.

[21] See Thomas B. Parrish and Jay G. Chambers, "Financing Special Education," *The Future of Children* 6 (Spring 1996): 121-138. Note these percentages are for 1987-88, the last year that states were required to report special education expenditures to the U.S. Department of Education. The last independent national special education cost study was based on 1985-86 data.

[22] In Montgomery County, Maryland, for example, the school system's legal fees increased 240 percent between 1990 and 1995.

[23] See Robert Worth, "The Scandal of Special Education," *Washington Monthly* (June 1999): 34-38.

[24] See Richard Rothstein and Karen Hawley Miles, *Where's the Money Gone? Changes in the Level and Composition of Education Spending* (Washington, DC: Economic Policy Institute, 1995).

[25] In New Jersey, fully five percent of special education students attended private schools at taxpayers' expense during the 1994-95 school year, with an additional seven percent having part of their private school costs paid for by the public school system. In Washington, D.C., private placements account for over a third of the District's $167 million special education budget, even though less than one-sixth of the District's special education students attend private schools.

[26] See Worth, "The Scandal of Public Education."

[27] Cited in Jonathan Fox, "Sending Public School Students to Private Schools," *Policy Review* (January/February 1999): 25-29.

[28] See U.S. Department of Education, Office of Special Education Programs, *Implementation of the Individuals with Disabilities Education Act: Seventeenth Annual Report to Congress* (Washington, DC: U.S. Department of Education, 1995), p. A-159, table AD1.

[29] See ibid.; see also Lynn S. Fuchs, Susan B. Eaton, Carol Hamlett, and Kathy Karns, "Supplementing Teacher Judgements of Test Accommodations with Objective Data Sources," *School Psychology Review* (in press); and Lynn S. Fuchs, Douglas Fuchs, Susan B. Eaton, and Carol Hamlett, "Reading Test Accommodations for Students with Learning Disabilities: Using the Dynamic Assessment of Test Accommodations (DATA) to Supplement Teacher Judgements" (Peabody College of Vanderbilt University, unpublished manuscript).

[30] See Wayne J. Camara, Tina Copeland, and Brian Rothschild, *Effects of Extended Time on the SAT I: Reasoning Test Core Growth for Students with Learning Disabilities*, College Board Report No. 98-7 (New York: College Board, 1998).

[31] See Beth Azar, "Fairness a Challenge When Developing Special-Needs Tests," *APA Monitor* (December 1999): 31.

[32] See Camara, Copeland, and Rothschild, *Effects of Extended Time on the SAT I*, 1; see also W. Willingham, M. Ragosta, R.E. Bennett, H. Braun, D.A. Rock, and D.E. Powers, *Testing Handicapped People*, (Boston, MA: Allyn & Bacon, 1988).

[33] See Kenneth Smith, "Disabled Educators," *The Washington Times* (May 6, 1999), sect. A, p. 19.

[34] See ibid.

[35] Personal communication, 59th Annual Conference and Exposition, National School Boards Association, Alexandria, VA.

[36] See Eli J. Lake, "Appeals Court to Revisit Key Learning Disorder Ruling," *Education Daily* 32, no. 122 (1999): 4.

[37] See Robert J. Sternberg and E. L. Grigorenko, *Our Labeled Children* (Reading, MA: Perseus Books, 1999).

[38] For further discussion, see Mark Wolery and James Schuster, "Instructional Methods with Students Who Have Significant Disabilities," *Journal of Special Education* 31 (1997): 61-79.

[39] For further discussion, see Diane M. Browder, Timothy Minarovic, and Edward Grasso, *Functional Approaches to Low Incidence Populations: Functional and Noncategorical Identification and Intervention in Special Education* (Des Moines, IA: Iowa Department of Education, 1998).

[40] See H. Goldstein and E. Hockeberger. "Significant Progress in Child Language Intervention: An 11-Year Retrospective," *Research in Developmental Disabilities* 12 (1991): 401-424.

[41] See Browder, Minarovic, and Grasso, *Functional Approaches to Low Incidence Populations*.

[42] See Terman, Larner, Stevenson, and Behrman, "Special Education for Students with Disabilities: Analysis and Recommendations,"4-24.

[43] For further discussion, see G. Lyon Reid and Vinita Chhabra, "The Current State of Science and the Future of Specific Reading Disability," *Mental Retardation and Developmental Disabilities Research Review* 2 (1996): 2-9; and Sternberg and Grigorenko, *Our Labeled Children*.

[44] See Sternberg and Grigorenko, *Our Labeled Children*.

[45] See ibid.

[46] See Peter Jensen and the MTA Cooperative Group, "A 14-Month Randomized Clinical Trial of Treatment Strategies for Attention-Deficit/Hyperactivity Disorder," *Archives of General Psychiatry* 56 (1999): 1073-1086.

[47] See Alan E. Kazdin, *Treatment of Antisocial Behavior in Children and Adolescents* (Homewood, IL: Dorsey Press, 1985).

[48] See Dennis Russo and Robert Putnam, *Implementing Effective Behavioral Strategies in Schools and School Systems* (paper presented at the 31st Annual Convention of the Association for the Advancement of Behavior Therapy, November 12, 1999, in Toronto, Ontario).

[49] For further discussion of the effectiveness of special education, see Mark Kelman and Gillian Lester, *Jumping the Queue: An Inquiry into the Legal Treatment of Students with Learning Disabilities* (Cambridge, MA: Harvard University Press, 1998); and Edwin W. Martin, "Learning Disabilities and Public Policy" in *Better Understanding Learning Disabilities: New Views from Research and Their Implications for Education and Public Policy*, eds. G. Reid Lyon, D.B. Gray, John F. Kavanaugh, and Norman A. Krasnegor (Baltimore, MD: Paul H. Brookes, 1993): 325-342; and M.C. Wang and E.T. Baker, "Mainstreaming Programs: Design Features and Effects," *Journal of Special Education* 19 (1986): 503-526.

[50] See Mary M. Wagner and Jose Blackorby, "Transitions from High School to Work or College: How Special Education Students Fare," *The Future of Children* 6 (Spring 1996): 103-120.

[51] See Lose Blackorby, "Participation in Vocational Education by Students with Disabilities," in *The Secondary School Programs of Students with Disabilities: A Report for the National Longitudinal Transition Study of Special Education Students*, ed. Mary M. Wagner (Menlo Park, CA: SRI International, 1993), 51-548.

[32] See Abigail Thernstrom, "Courting Disorder in the Schools," *The Public Interest* 136 (Summer 1999): 18-34.

[33] See S. Epps and G. Tindal, "The Effectiveness of Differential Programming in Serving Students with Mild Handicaps," *Handbook of Special Education: Research and Practice*, vol. 1 (Oxford: Pergamon Press, 1987), 213-248; Reschly, "Identification and Assessment of Students with Disabilities," 40-53; and M.C. Wang, M.C. Reynolds, and H.J. Walberg, eds., *Implementation of the Individuals with Disabilities Education Act: Seventeenth Annual Report to Congress* (Washington, D.C.: U.S. Department of Education, Office of Special Education Programs, 1995).

APPENDIX C - WRITTEN STATEMENT OF PATRICK J. WOLF, Ph.D., ASSISTANT PROFESSOR OF PUBLIC POLICY, GEORGETOWN PUBLIC POLICY INSTITUTE, GEORGETOWN UNIVERSITY, WASHINGTON, D.C.

Testimony of Dr. Patrick J. Wolf, House Committee on Education and the Workforce, Subcommittee on Education Reform, May 2, 2002

Mr. Chairman and Members, I am pleased to speak to you today about how the special education system might be improved to better promote effectiveness and results-based accountability. In 1997 you undertook an effort to revise the federal law governing special education in order to focus more strongly on whether or not the services being provided to students with disabilities are actually resulting in greater learning. The '97 amendments to the Individuals with Disabilities Education Act sought to replace a process-focused, compliance-driven accountability system with a results-focused, performance-driven alternative. This change represented movement in the right direction.

However, a central finding in our research is that the results-based accountability system under IDEA '97 retains virtually all of the onerous procedural requirements of the previous system, yet omits components that are essential to holding implementers truly accountable for results. Special education administrators continue to rely upon compliance with procedural rules as the yardstick for judging whether or not a local special education program is succeeding. Such "checked boxes" accountability focuses on whether or not students are receiving services, not whether or not they are actually learning. The current oversight system for special education falls short of achieving true results-based accountability because it does not standardize certain key requirements regarding the testing of students with disabilities. It also neglects to hold school systems accountable when they persistently fail to achieve results for such students.

Undoubtedly, many special education teachers and administrators are making great strides with their students. However, these successes are happening largely in spite of, not because of, the accountability system that is in place.

A more complete results-based accountability system in special education would have the following features:

- Every student's Individualized Education Program would describe the tests that are appropriate to measure the student's educational progress and any accommodations that should be made to the testing conditions based on the student's disability;
- The tests and accommodations for each student would be applied consistently, year-after-year, for all students with non-degenerative disabilities;
- The process would begin with a set of baseline tests to measure initial levels of ability and achievement;
- Subsequent results would be reported in terms of gains or losses from that baseline;
- Reports also would include narrative from the teachers, counselors, and administrators who are educating the student, in order to place the gains or losses in context;
- Evidence of aggregate declines in the performance of the special education students in a given district would lead to a state or federally led intervention involving greater resources and supervised programmatic changes;
- Persistent performance declines would provoke tough sanctions, including the transfer of students to neighboring school districts, charter schools, or private schools at district expense.

Two elements of this proposal stand out. First, using gain scores is critical. Special education students are, well, "special." They exhibit various handicapping conditions of varied severity that, more or less, limit their educational ability and achievement. By using the metric of student-specific educational gains instead of an arbitrary standard of attainment to evaluate special education students, the system would automatically control for a number of pre-existing conditions that are particular to each student. The use of gain scores also minimizes the incentives for classifying a non-disabled student as disabled, since they measure individual progress instead of lowering the achievement bar.

Second, greater customer choice is likely to enhance accountability in special education. Experimental customer choice programs, such as public housing vouchers, have demonstrated that choice initiates a flight to quality. The observed behavior of customers who have choices provides important feedback to decision makers, helping them invest more money and effort in what works and waste less resources on what fails. The power of parents to move their disabled child out of a program that is failing and into a more promising alternative would likely improve the educational results for that child and motivate more teachers and administrators to achieve positive results for their students with disabilities.

Mr. Chairman, you will notice that several elements of my proposal for special education are modeled after the "Leave No Child Behind" reforms. That is no coincidence. It would be a shame if students with disabilities were left behind as the new federal results-based accountability system drives the students in regular education programs to higher levels of achievement. I urge you to give students with disabilities the opportunity to impress us and themselves by demonstrating progress towards reasonable educational goals. If, instead, we expect little of them, then, unfortunately, we are likely to have our limited expectations fulfilled.

Mr. Chairman, that concludes my statement. I ask that a copy of two chapters that I co-authored in a recent book about special education reform serve as my extended remarks and be entered into the Record along with this brief overview.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Patrick J. Wolf

1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee). Yes [✓ No]

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999:

Subcontract to lecture to the Defense Leadership & Management Program, 1999-2001. The contract was obtained from the U.S. Department of Defense by the National Security Studies Program at Georgetown University

3. Will you be representing an entity other than a government entity? Yes [✓ No]

4. Other than yourself, please list what entity or entities you will be representing:

none

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

none

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract:

none

7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: Yes [✓ No]

Signature: Patrick J. Wolf Date: 4-30-02

Please attach this sheet to your written testimony.

Chapter 14

Effectiveness and Accountability (Part 2): Alternatives to the Compliance Model

Bryan C. Hassel and Patrick J. Wolf[*]

Introduction

As we described in Chapter 3, effectiveness and accountability policy and practice in special education have traditionally been shaped by a "compliance model" that defines effectiveness largely in terms of following certain processes and ensures accountability through the documentation of procedural compliance. Although the Individuals with Disabilities Education Act amendments passed in 1997 (IDEA 97) were billed as the start of a new regime of results-based accountability, we have seen that they did not replace the traditional compliance-based model. Instead, the 1997 amendments merely grafted performance measurement onto the pre-existing compliance approach. In addition, IDEA 97 allowed critical exceptions and exemptions, which have enabled a number of state and local education agencies to postpone if not entirely avoid the day in which documented changes in educational achievement drive effectiveness and accountability in special education. Moreover, both the accountability system designed by the Department of Education in the wake of IDEA 97 and its operation "in the trenches" preserved much of the process-focus and procedural-documentation components of the familiar compliance model described in Chapter 3.

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> outcome-based measures of
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If the effectiveness standards and accountability mechanisms of IDEA 97 did not accomplish the "regime shift" that its backers claim, what alternatives might be available to promote outcome-based measures of achievement and real accountability for performance? In this chapter, we address that question in two stages:

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[*] The authors would like to acknowledge the insightful comments of Chester E. Finn, Jr.; Charles R. Hokanson, Jr.; and participants in the November 2000 "Rethinking Special Education for a New Century" conference. Wendy Wendt provided valuable research assistance. All viewpoints and errors are those of the authors.

First, we examine promising alternatives to the compliance model that have arisen outside of special education, indeed outside of education altogether, as policymakers in other domains have prompted shifts from a compliance-based to a results-based approach. These developments in other fields may provide inspiration and lessons for special education policy.

Second, we develop a broad framework for the application of these approaches within special education. The framework we propose makes student learning results the central driving force of special education policy, not an overlay on a pre-existing compliance system. Though certain procedural requirements remain in force, they do so to make it possible for results-based accountability to fulfill its potential.

The framework we propose makes student learning results the central driving force of special education policy, not an overlay on a pre-existing compliance system.

Alternatives to the Compliance Model

Special education is not the only domain in which policymakers have sought to achieve a worthy goal by setting hard-and-fast procedural rules and then creating an enforcement apparatus to ensure that regulated parties meet their responsibilities. When environmental degradation began to concern us decades ago, Congress and state legislatures responded with an array of detailed prescriptions for how industry and citizens should reduce the amount of pollution and waste they produced, and empowered the Environmental Protection Agency and parallel state and local offices to enforce these rules.[1] Problems with safety and health in the workplace prompted the creation of a similar apparatus, embodied in the Occupational Safety and Health Administration and its state counterparts.[2] Within government, the prevalence of political patronage and other questionable practices in hiring and procurement led policymakers to create the civil service and detailed procurement regulations to ensure that government managers gave out jobs, promotions, and contracts according to merit-based criteria.[3]

These approaches have successfully eliminated some of the troubling behaviors that they targeted. The release of dangerous pollutants into the atmosphere has been greatly reduced. The incidence of certain workplace injuries has dropped dramatically. Handing out jobs and contracts to political cronies has become less common in government. As has happened in special education, however, observers of these other domains have become critical of their nearly exclusive reliance on the enforcement approach to achieving desired policy objectives. Here are some of the major criticisms, many of them summarized by Harvard public-management professor Malcolm Sparrow[4]:

- **The inflexibility of regulations impedes effective practice.** Because regulations are designed as "one-size-fits-all" interventions, they often block local actors from doing what's best in a given situation. They also may fail to adjust over time to changes in best practice or in the nature of the problem to be solved. And to the extent that regulations prescribe in detail how a problem should be handled, they do not provide incentives for regulated parties to work out better ways of achieving the same results.

- **The attention of regulators is distributed irrationally.** Because the enforcement approach directs regulators to enforce rules rather than solve problems, regulatory attention does not necessarily focus on the most pressing or highest-impact activities. Analyses of the regulation of risk have shown that regulatory action often focuses massive resources on activities with little payoff.[5] For example, if environmental regulations require officials to concentrate on reducing particular toxins, they may thereby ignore other threats to health that are more severe. Some policy scholars have argued that, in the extreme, the "capture" of a regulatory agency by its regulatory target leads the agency to partner with the people it is supposed to oversee and deliberately shine its regulatory light only in the places where mischief is not occurring.[6]
- **The sheer volume and complexity of regulation diminish its effectiveness.** As requirements increase, it becomes less likely that regulated parties can keep up with their obligations, even if they would like to comply. It also becomes less likely that regulators can effectively monitor compliance and apply sanctions.[7]
- **The costs of regulation outweigh the benefits.** According to one estimate, the cost of complying with federal regulations reaches nearly $700 billion per year.[8] Concerns about cost, of course, lead to constant calls by business organizations and scholars to reduce the regulatory burden on their industries.[9]
- **Regulation of process ignores results.** A focus on procedural rules induces regulated parties to focus on checking off procedural elements rather than ensuring that they are achieving the results the regulation intends to produce.

Regulators elicit compliance not just through detailed command-and-control regulation but also by deploying a broad range of tools to achieve the intended results.

In response to these criticisms, policymakers and regulators have begun to experiment with a wider range of tools. Though they are diverse, one central concept ties them together—*a focus on results*. In each instance described below, policymakers or agency officials sought to replace a system that focused purely on regulatory compliance with one that *concentrates the efforts of regulated parties on achieving superior outcomes*. The following subsections describe some of these alternative approaches, provide examples of their use, and discuss their potential and limitations. Note that these approaches are not mutually exclusive; indeed, as the next section will argue, joining them into coherent policies is the principal challenge policymakers and regulators face in special education and elsewhere. The approaches are presented under three headings, which represent increasingly radical departures from the compliance model.

Smart Regulation

"Smart regulation" shares a great deal with the compliance model.[10] Basic norms of behavior remain in place, regulators can still check to see whether regulated parties are following them, and regulators can still impose sanctions when parties fail to comply. But regulators elicit compliance not just through detailed command-and-control regulation; instead, they deploy a broader range of tools to achieve the intended results. This section discusses four such tools: forging voluntary agreements (with technical assistance); using information to spur good behavior; addressing underlying causes of noncompliance; and replacing procedural controls with after-the-fact checks.[11]

Voluntary agreements. Perhaps the best way to understand the idea of voluntary agreements is to look at examples of how they have worked in practice. One illustration is the Occupational Safety and Health Administration's Maine 200 program, launched in 1993. OSHA offered Maine's 200 employers holding the worst records of on-the-job injuries a choice: either develop a company-designed comprehensive health-and-safety program with employee involvement, or undergo a traditional OSHA inspection. Companies that opted for the voluntary plan would also receive extensive technical assistance from OSHA in identifying and remedying workplace hazards. The program immediately motivated a profound shift in responsibility for identifying and abating workplace hazards. Within its first year, companies themselves had cited nearly three times as many hazards (95,800) as OSHA had managed to identify in the eight previous years (36,780). In addition, worker compensation claims in Maine dropped by 35 percent during the first two program years.[12]

These examples of voluntary agreements share an important element: They focus on results. Regulators asked: What are we trying to accomplish and are there better ways to reach those goals?

Though OSHA's Maine 200 program is one of the better-known examples of voluntary agreements (it won a Ford Foundation/Kennedy School of Government Innovations Award), it is by no means the only one. During the Clinton administration, the Environmental Protection Agency was the site of numerous similar initiatives. In Project XL, for example, regulators gained the authority to offer flexibility to companies in exchange for agreements to produce superior environmental results. This initiative responded to bizarre situations like one involving Amoco, which was required by EPA regulations to spend $31 million to recover a small amount of benzene when an alternate approach (which ran against regulations) would have allowed the company to recover five times as much benzene for only $6 million.[13] Numerous other federal, state, and local agencies have adopted similar approaches. These examples share an important element: They focus on results. Regulators stepped back from their standard operating procedures and asked: What are we trying to accomplish, and are there better ways to reach those goals? They then worked with the regulated parties to produce better outcomes, even if it meant scrapping some conventional compliance requirements.

Using information. A twist on voluntary agreements involves the use of information-based strategies to achieve compliance.[14] Under this approach, regulators require regulated parties to disclose certain facts about their operations to the media and the wider public. Because most companies do not want to be embarrassed publicly, disclosure may induce compliance where traditional enforcement mechanisms have failed. For example, the Toxics Release Inventory (TRI) requires more than 20,000 facilities to provide information to the Environmental Protection Agency about their release and transfer of toxic chemicals. The EPA then publishes the information. Though analysts stress that it is difficult to attribute reductions solely to TRI, the numbers are impressive: Between 1988 (when the program began) and 1997, "total releases of toxic chemicals tracked by TRI declined 49 percent nationwide."[15] The Consumer Product Safety Commission traditionally has also used an information-based strategy in an attempt to shame the manufacturers of dangerous products as well as reward companies that go out of their way to produce safer toys and household goods.

Addressing root causes. In another form of smart regulation, agencies sometimes try to induce compliance by addressing the underlying causes of failure to adhere to rules. A good example is the Immigration and Naturalization Service's Operation Jobs, which sought to break a cycle of repeated enforcement of laws prohibiting the employment of undocumented immigrants in Dallas, Texas. Traditionally, the INS's unannounced visits to companies and subsequent arrests of illegal workers would produce a surge of job openings that all-too-often were immediately filled by a new group of illegal hires. As a result, traditional enforcement had no lasting effect. Under the new program, The INS helped to match these jobs with legal replacements by partnering with public and nonprofit organizations that worked with women transitioning off welfare, unemployed youth, documented immigrants, and other people seeking work. The effect was immediate. Within the first two weeks of the program, Operation Jobs produced 1,400 job placement referrals, and, by the end of the year, 2,500 employable adults and youth had gone to work.

Because smart regulation leaves in place some of the basic regulatory apparatus, it appears to retain a check against flagrant violations by regulated parties.

Moving to after-the-fact audits. Often a particular regulation is not objectionable in itself, but the detailed procedural requirements imposed to ensure that regulated parties comply with it are onerous and counterproductive. Consider procurement. Many of the basic concepts of government procurement policy are essentially sound. For example, government buyers should not use the government's checkbook to make personal purchases, or enter into contracts with companies solely because their owners have strong political or family connections to agency officials. Few people would say such restrictions should vanish entirely, but the way government agencies have gone about ensuring compliance with them has been, in the eyes of some observers, excessively procedural, requiring government buyers to go through numerous hoops and fill out reams of paperwork to make even the smallest purchases. Over the last decade, reformers have tried to do away with such procedural hurdles while maintaining essential safeguards. One wide-ranging reform allowed buyers to use credit cards to make purchases up to a certain amount, bypassing the usual submit-and-wait requisition process. In the Agriculture Department, according to one analysis, "costs per transaction have dropped from $77 per paper purchase order to $17 per electronic transaction, a decrease of almost 80 percent. The agency stands to save $29.5 million annually as a result of its award-winning program."[16] To prevent abuse, an automated monitoring system triggers alerts if users appear to be logging personal expenses with their cards or making multiple purchases from the same vendor within a day. And an *ex post* review of one out of every 100 transactions creates a strong deterrent against fraud at a much lower cost than ex ante reviews of all transactions.

Post-audits, by definition, catch problems only after the proverbial cow has escaped from the barn. Fines and other *ex post* sanctions can punish offenders, and thereby possibly deter others from leaving the barn door open. Yet such punishments often cannot undo the damage that has occurred. When the consequences of noncompliance are truly dire, post-audits are an inappropriate accountability mechanism. One way to address this problem is by offering flexibility not across the board, but to those agents that have proven through past performance that they are good stewards of resources or policy.

Benefits and Drawbacks of Smart Regulation

These examples illustrate the central features of smart regulation. First, the *underlying norms or principles* often do not change. Second, the ultimate *threat of sanctions* still looms in the background for regulated parties. Indeed, it sometimes looms larger than before, as in the case of the threatened OSHA inspections in the Maine 200 program. Third, the approaches provide some flexibility to regulated parties about *how to comply.* They do not dictate in great detail the precise actions that parties must take, just the basic principles they must uphold. Fourth, the strategies often use decidedly *non-regulatory* tactics to induce performance, such as technical assistance, publicity, or efforts to address underlying causes of problems. Finally, and perhaps most importantly, smart regulation *focuses relentlessly on results.* The purpose of each change is to achieve a better outcome, whether that is reduced pollution, decreased hiring of illegal immigrants, or other policy goals.

> *When regulations appear ineffective, stifling, inflexible, or too costly to continue, the search is on for forms of accountability that can replace the focus on compliance.*

Smart regulation is appealing for a number of reasons. Because it leaves in place some of the basic regulatory apparatus, it appears to retain a check against flagrant violations by regulated parties, assuming that the existing regulatory regime is appropriately designed and well targeted. If negotiations, technical assistance, or other approaches fail to produce results, the agency can still throw the book at an uncooperative organization. This ultimate threat of sanctions provides the motivation for regulated parties to come to the negotiating table or accept technical assistance in the first place. At the same time, though, the flexibility built into these approaches arguably leads to better outcomes, or equal outcomes at lower cost. In the case of Maine 200, though OSHA retained final say, negotiated plans were likely to be more sensible and better tailored to companies' circumstances than plans handed down by OSHA would have been. In the credit card procurement initiative, illicit contracting is still policed, but honest government buyers are spared the hassles of command-and-control procurement systems.

Smart regulation has drawbacks, too. Critics of regulation assail it for not going far enough, leaving in place a regulatory apparatus that needs to be dismantled altogether. Proponents of regulation attack it for allowing regulated parties to skirt important constraints, negotiating their way out of obligations. They also worry that these new approaches will lead to non-uniformity in the implementation of regulations, with some offenders getting a pass while others comply. Many regulatory regimes were put in place precisely to ensure that everyone is treated alike, and proponents of that approach resist any changes that might lead to differential treatment.

The approach may also create an ambiguous situation for both regulated parties and regulators, leaving it unclear what kinds of behaviors and activities are permissible under the new regime. In the OSHA case, for example, what happens if a worker in a company with an OSHA-approved plan finds a specific safety violation? Can OSHA inspect the plant and levy any justified sanctions? If so, what has the company really gained by going through the negotiating process? If not, how can workers at the plant gain protection from unsafe conditions? Can regulators negotiate away elements of law, or are there some constraints that must remain in place? This kind of ambiguity apparently led to an internal slogan at EPA for Project XL: "If it ain't illegal, it ain't XL."[17] More seriously, it has often made it difficult for companies and regulators to come to final agreements. Despite the appeal of Project XL, only a small number of agreements have been negotiated under it.[18] As a result of these ambiguities, attempts to implement negotiated arrangements have frequently resulted in litigation.[19]

Because of these problems, some regulatory reformers have looked beyond smart regulation to more radical approaches in which existing rules and restrictions are actually scrapped and replaced with other means of producing desired results. The next two sections describe a pair of such approaches.

Incentives for Performance

Though some enthusiasts of deregulation call for an end to regulation altogether, most recognize that simply throwing rules on the trash heap will not suffice. As inane as many specific regulations may be, broad regulatory structures (such as environmental protection and workplace safety) often have valuable social purposes that policymakers and regulators remain eager to advance. Accordingly, when regulations appear ineffective, stifling, inflexible, or too costly to continue, the search is on for forms of accountability that can replace the focus on compliance. Chief among these is accountability for "results," "performance," or "outcomes." Accountability for results starts from the reasonable premise that results are what matter most. The aim of public policy, this reasoning goes, should be to produce the intended outcomes, not to prescribe the means of getting there. Policymakers (and their delegates in public agencies) should set goals for performance, and then create a system of incentives to induce relevant parties to achieve those goals, by whatever means make sense.

Policymakers should set goals for performance, and then create a system of incentives to induce relevant parties to achieve those goals, by whatever means make sense.

Of course it is not necessary to look outside the domain of education to find examples of performance-based reform. Almost every state has instituted standards for student learning, required schools to administer tests to determine whether pupils are meeting those standards, and attached at least some consequences to how schools, school districts, and/or students perform on these tests. Even within special education, the 1997 IDEA amendments sought to place more emphasis on the setting and achieving of learning goals by disabled students. However, in many of these educational settings (including special education, as discussed in Chapter 3), performance accountability has been primarily an *overlay* on the existing compliance-oriented system, rather than a replacement for it. Though standards-and-accountability reforms often carry with them a great deal of rhetoric about giving districts and schools more authority in exchange for their enhanced accountability, the vast majority of public schools have little control over their budgets, personnel, use of time, or even their instructional programs. Charter schools and some unique public schools are exceptions, but they represent a small fraction of all public schools. The 1997 IDEA amendments pressed for more performance accountability, but also left compliance in place as the essential core of special education policy.

Success stories. Consequently, it is helpful to look outside of education for some examples of regulatory reform in which moves toward performance-based accountability were actually moves away from compliance-based approaches. Perhaps the best example was Great Britain's "Next Steps" initiative, launched in 1988. Over the course of several years, most of the country's government agencies negotiated performance agreements (known as "framework documents") with the ministers or departments overseeing them. These documents specified results the agency would achieve over a three-year period and the flexibility and autonomy it would achieve in return. They also set forth consequences that would attach to performance and nonperformance. The chief executive of each agency would be required to reapply for his or her job every three years, and the agency's performance over that time would play a central role in the decision about rehiring.

> An important subset of performance accountability seeks to encourage a particular kind of outcome: prevention of problems before they develop.

As the approach—which resembles American charter schools—spread across the government, success stories spread as well. Though many of these successes involved cost savings, the arguably more important outcome was improvements in the quality of services provided. The Vehicle Inspectorate—newly judged by measures such as waiting times and customer satisfaction—immediately opened its offices on Saturdays and Sundays, making it much easier for people with Monday-to-Friday jobs to have their cars inspected. The Employment Service began publishing comparative data about local offices. Offices responded by cutting waiting times, increasing the accuracy of unemployment-check payments, and reducing costs. Most significantly, the service as a whole increased job placements 40 percent with no new resources.[20]

An important subset of performance accountability approaches seeks to encourage a particular kind of outcome: *prevention of problems before they develop.* By providing incentives for public agencies or private actors to take preventive steps, overseers have managed to reduce the incidence of problems and the costs of dealing with them. Often, the mechanism used to encourage prevention is a set of fiscal incentives that, in effect, provide bonuses for agents that do a good job with prevention. For example, Scottsdale, Arizona (like many other municipalities), provides a lump-sum budget to an employee-owned company that operates its fire department. The company may keep any surplus left after a year of firefighting. As a consequence, the incentives are strong for the company to focus on preventing fires altogether. The company works closely with developers of new homes and commercial establishments to help them construct fire-safe structures. The company also led the charge to pass a local ordinance requiring sprinkler systems in new buildings. The results: between 1986 and 1991, as the value of property in the city rose 86 percent, fire losses dropped by 15%.[21]

In another example, the state of Oregon provides $48,000 to counties for each bed in juvenile detention centers that is *not* used. Consequently, Deschutes County established a community-based alternative to state incarceration for non-violent juvenile offenders that focuses on early intervention, prevention, and creative reinvestment of public money. The results are telling: Between 1997 and 2000, Deschutes County saw its average incarceration rates drop from 23 to 5 youths (the lowest in the country), while earning $630,000 in unused-bed resources to support prevention efforts.[22]

Benefits and Challenges to Incentives for Performance

These examples demonstrate the basic principles of the performance-based approach. Overseers set *goals or standards* for regulated parties to meet. To the extent practicable, these goals and standards concern ultimate destinations (*outcomes*) rather than procedural steps along the way (*inputs*). Overseers establish *measures* that will allow everyone to assess the extent to which regulated parties are meeting goals and standards. They give regulated parties the flexibility to pursue those goals as they see fit, retaining only the most basic rules to guard against gross malfeasance. And they impose consequences based on how well the regulated parties achieve their objectives—often both positive consequences for success and negative consequences for failure.[23] In the case of Britain's Next Steps program, these features are recorded in framework documents that govern each agency's conduct. In cases of the prevention-based approaches, standards, measures, and consequences are more indirect. Scottsdale's fire department, for example, is not given an annual goal for fire losses. Instead, the built-in fiscal incentives encourage the fire department to establish its own ambitious standards and measure its results; the consequences come out in the bottom line.

Rather than prescribe a single way to achieve goals, the performance-based approach gives regulated parties incentives and flexibility to figure out new and better (or less expensive) ways of producing outcomes.

The performance-based approach boosts many appealing features. It focuses the attention of both regulators and regulated parties on what matters most: the outcomes of their actions, at least as they are defined by the goals and standards. Rather than prescribe a single way to achieve goals, it gives regulated parties incentives and flexibility to figure out new and better (or less expensive) ways of producing outcomes. This flexibility allows parties to adapt to local circumstances and invent "better mousetraps" over time. The goal, of course, is simply to "catch mice."

The performance-based approach faces challenges as well. For some opponents of regulation, it still does not go far enough. Bureaucrats are still put in charge of setting standards and goals which may be unreasonable, inflexible, or ill-suited to local circumstances or changes over time in the regulated activities.[24] Even proponents note technical challenges in creating incentives for performance. First, it is often difficult to set goals and standards that strike the right balance between being ambitious and being attainable, especially when attempting to do so for an entire state or nation. Second, it is often challenging to find instruments that truly measure the outcomes that policymakers most want. Without credible measures, it is hard to generate support for the consequences that attach to inadequate performance.[25] Third, because performance-measurement systems tend to rely on aggregate measures (in order to be manageable and "objective"), they can ignore problematic situations within the broader system. For example, suppose a firm achieves exemplary workplace safety results on a company-wide basis but has one plant where safety is abysmal. Is there any protection for workers at that plant in a system with no rules for specific workplaces, just overall goals? In principle, it is possible to design a system of goals and measures that attends to the problem of the smallest units, but in practice doing so can magnify the difficulties of goal-setting and data-gathering. A fourth and related problem arises when policymakers care not just about ultimate outcomes, but also about how regulated parties pursue these goals. In such cases, an outcomes-based regime does not guarantee all the desired results. For example, regulation in air safety is very compliance-oriented, requiring airlines to employ particular equipment and follow specified procedures. A results-based alternative—allowing airlines to do as they please so long as they kept the number of air deaths per year below an acceptable number—would not be appropriate. Passengers want assurance that airlines are making an effort to ensure that *every airplane* is safe for *every flight*, and that *every pilot and crewmember* is well-trained.

Market-based reforms seek to hold regulated parties accountable via a market-like mechanism rather through a set of goals, measures, and consequences.

Customer Choice

Another technique that policymakers have utilized to move away from enforcement-based systems is the use of market mechanisms. Like performance management, market-based approaches eliminate many of the constraints that formerly governed the behavior of regulated parties. But instead of replacing them with goals, measures, and consequences imposed by public entities, market-based reforms seek to hold regulated parties accountable via a market-like mechanism. Markets, of course, are not a recent invention of regulatory theorists. The idea that market mechanisms can maximize public benefit through an "invisible hand" goes back to Adam Smith and, in less sophisticated forms, even further.

Market-based approaches come in different shapes depending upon the particular regulatory problem being addressed. This section discusses one important variant: customer choice.[26] The basic idea is to empower a set of customers to make decisions about the providers from which they will buy the service (or whether they will buy it at all). Often, the immediate customers are the ultimate beneficiaries of the service—such as families of school-aged children, recipients of public assistance seeking job training, or government employees who need to purchase supplies or equipment. Other times, the customer acts on behalf of the ultimate beneficiaries—such as a city agency purchasing garbage-removal services or water. Instead of dictating in detail how providers will carry out the activity, overseers leave those decisions to providers on the theory that those who perform poorly will simply "go out of business."

A good example comes from America's experience with public housing. For many years, the primary way in which the government helped the poor afford shelter was by constructing public housing "projects" and subsidizing the rent of low-income residents (usually by charging them a percentage of their income). Because this housing was often the only realistic alternative for its residents, public housing did not really have "customers"; its residents were not likely to go elsewhere if they were unhappy with their dwellings. To maintain quality, therefore, overseers of public housing had to employ a compliance model, specifying in detail how units would be constructed and maintained. This approach, however, could not overcome the tendencies toward decline and chaos that infected these complexes. No handbook of regulations on safety or building upkeep could stem the tide of vandalism and neglect. The compliance model did not cause this decline, but it was woefully inadequate as a solution.

By contrast, the federal Section 8 program pursued a similar goal but used customer choice rather than compliance to achieve quality and satisfaction. Under Section 8, low-income families receive subsidies that they can put toward the housing of their choice. If unhappy with the housing they have selected, they can search for alternatives. Landlords have new incentives to provide quality housing that is affordable to Section 8 recipients because their ability to pay is enhanced by the subsidy. To be sure, Section 8 is not a perfect system. The supply of affordable housing is limited, and many landlords resist Section 8 tenants. Compared with traditional public housing, however, most would judge Section 8 a success, providing homes for millions of people in places they want to live outside the confines of public housing projects.

> *The main appeal of empowering customers lies in the fact that customers with a choice of providers are more apt to receive services that meet their needs and suit their preferences.*

By way of further example, many government agencies across the world have been transformed into "enterprise" functions, living or dying based on their ability to convince other agencies to deliver their services. If the central supply depot cannot produce the right supplies in a timely and cost-effective manner, managers may shop at Office Depot or other vendors instead. If the human resources department cannot stir up good pools of candidates for job openings, managers can place their own classifieds or hire headhunting firms. If the sanitation department cannot deliver better service and/or lower costs than alternate providers, the city can contract with the private firms for this service.[77] In all these examples, providers face strong incentives to provide excellent service. They are not told what to do but are induced to figure out the "best" approaches by their need to attract and retain customers.

Benefits and Drawbacks of Customer Choice

The advantages and drawbacks of this approach have been voluminously discussed in general and more specifically in reference to K-12 education, where reforms that give families more choice over the schools their children attend are both popular and controversial. The main appeal of empowering customers lies in the fact that customers with a choice of providers are more apt to receive services that meet their needs and suit their preferences. Moreover, providers that must attract customers in order to survive and prosper are likely to be better motivated to improve the quality of services. Finally, to the extent that providers are paid on a per-customer basis for their services, they also face strong incentives to reduce the costs of delivering those services. The drawbacks of customer choice as an accountability mechanism include (1) the potential disconnect between what individual customers want and "the public interest"; (2) the fact that customers in some markets may not possess sufficient information to make sensible choices; and (3) the related fact that the customers who are least informed or motivated to seek out quality services may be those in greatest need. Like performance management, choice-based approaches might result in aggregate improvements in service but leave significant sub-groups with the same or inferior levels of service.

> One theme that through the various approaches discussed in this chapter is the importance of high-quality information about the regulated activity.

Tying it Together: Transparency and Problem-Based Thinking

In other regulatory domains, recent decades have witnessed much experimentation with alternatives to traditional command-and-control structures, adding many tools to regulators' toolboxes. But simply having the tools has not by itself revolutionized regulatory domains. Harvard professor Malcolm Sparrow has noted: "Regulators face no shortage of strategies, methods, programs, and ideas. Rather they face the lack of a structure for managing them all."[28] This section outlines two important ideas that contribute to such a structure, with examples of how these ideas have been put to work. We then explore how these ideas might apply to special education.

The Importance of Information and Transparency

One theme that runs through the various approaches discussed above is the importance of high-quality information about the regulated activity. The need for information is perhaps most obvious in the case of performance-management approaches, which rely centrally on measuring the progress of regulated parties toward pre-defined goals. But information is also critical in the other approaches. Under smart regulation, regulators need ways of knowing whether their creative approaches are indeed yielding better results. Regulators in a variety of fields have developed elaborate systems of random sampling to keep tabs on critical outcomes as new approaches go into effect.[29] And in some smart-regulation approaches, information plays an even more direct role as regulators seek to use publicity about compliance and/or outcomes to motivate regulated parties to comply. In customer-based market approaches, consumers need good information about services and performance in order to make intelligent choices among providers.

Too often, regulatory bodies lack the systems and expertise to acquire and use information in these ways. Many problems can contribute to this. First, good measures of newly important behavior or outcomes may not exist at the outset. Regulators may be faced with the task of developing such indicators from scratch, which is time-consuming and may require technical expertise not present in the agency. Second, information-gathering systems currently in place may not meet new information needs. In agencies that have traditionally relied on command-and-control regulation, information flows have been developed that mesh with those approaches. Agencies keep track of whether forms have been filed, deadlines met, counts taken, inspections conducted, dollars spent within the appropriate line items, and so on. Shifting to systems that focus on other tasks or measurements involves changing long-standing routines, which takes time and sometimes training. Third, although the technology available to regulatory agencies for information collection and analysis has improved dramatically in recent years, many agencies still lag behind. Finally, in agencies that have not heretofore relied heavily on data analysis, staff may lack technical skills required to make the best use of incoming information.

> ***One of the greatest barriers to change in regulatory practice is fear on the part of policymakers, regulators, and interest groups that it will be difficult to tell whether new strategies are working.***

As severe as these problems may be, solving them is generally worth the investment. One of the greatest barriers to change in regulatory practice is fear on the part of policymakers, regulators, and interest groups that it will be difficult to tell whether new strategies are working. Consider the case of Maine 200, which provides incentives for companies to comply voluntarily with regulations. Suppose that, after a few years of this approach, the agency's traditional measures showed a significant trend—the number of enforcement actions against companies was down. But did workplace safety actually improve? Sparrow writes, "In the absence of such measures, the ambiguity persists: maybe compliance improved. Or maybe the department got distracted or captured. No one can tell which, so observers remain free to choose whichever explanation suits their purpose."[30] In the case of OSHA in Maine, the agency did develop alternative measures, tracking the number of workers' compensation claims filed by employees. Because these dropped dramatically, the agency had some confidence that its tactics were actually improving worker safety, not just letting companies off the hook. Without such indicators, however, it would have been difficult for the agency to muster political support to change its approach in this way.

Problem-Based Thinking

Another theme in the discussion of these new regulatory tools is that each seems well-suited for some situations but not others. Part of the criticism of the command-and-control approach is that it has been applied indiscriminately to a wide range of regulatory problems regardless of whether it was the most effective strategy for solving a problem. As appealing as these alternate approaches may be, it would be incorrect to assume that any of them can solve every problem faced by policymakers and regulators.

Instead, the most sophisticated thinking about regulatory strategy proposes a "problem-based approach" whereby policymakers or regulators identify concrete problems that need to be addressed if outcome goals are to be achieved.[31] For each, they assemble a set of tools that seem likely to solve that particular problem. Rather than choose a specific tool (such as customer choice) in advance and go looking for ways to use it, the results-based approach suggests applying a great deal of energy to *defining problems and then selecting appropriate tools* to address them. Within any broad regulatory domain such as the environment or special education, there will be many different problems, each demanding its own tailored set of solutions. The aim of regulatory policy should be to create a system in which these problems are identified and then addressed using an array of tools.

Two implications of the problem-based approach are worth noting. First, it magnifies the informational needs sketched above. Understanding what the problems are, the contexts in which they arise, and the likely effectiveness of different tools requires large amounts of information. Assessing whether coordinated strategies are working also requires good measures of the incidence of the problem that is being addressed.

Second, an agency adopting the problem-based approach uses different tools in different situations. Though this point may seem obvious, it runs counter to traditional regulatory thinking, which tends to value consistency and uniformity. An agency taking a problem-based approach may end up applying different strategies to different problems under its purview, different regions of its jurisdiction, and different categories of regulated parties, even to specific regulated parties. Within the context of problem-solving, these variations are not capricious or arbitrary; instead, they are what Sparrow calls "rational inconsistencies," justified by the fact that they make it possible to solve problems that would go unsolved if the agency were required to apply a uniform approach across its entire domain.[32]

> [illegible] results, (2) a big toolbox, and [illegible] to results [illegible] obsession.

Implications for Special Education

Based on these experiences in other domains, this section sets forth principles for a reworked special education accountability system and then outlines how such a system might work.

Principles for Redesign

Here are three principles that we believe should guide any redesign of special education policy:

- **An obsession with results.** First and foremost, every element of the system should focus on student learning. This obsession must begin at the federal level, with the way Congress frames the federal mandate and the way Washington structures its funding and oversight of states. Through those mechanisms it must create the same obsession in state education agencies, so that they in turn structure their funding and oversight of school districts, charter schools, and other entities with student-learning results in mind. Prodded by those systems to focus intently on learning outcomes, districts must structure their relationships with schools and other providers to produce results. Ultimately, the people on the front lines, those who work directly with children, must share this obsession.
- **A big toolbox.** Within that results-driven framework, people involved at all levels should have access to a wide range of tools for achieving the desired outcomes. Taking a page from "problem-based thinking" in other regulatory domains, policymakers and officials at each level must give those at lower levels the authority to reach into a big toolbox and select the tools most likely to solve problems, including but not limited to the strategies

discussed earlier in this chapter: customer choice; incentives for performance; and "smart regulation" approaches such as technical assistance, information, and addressing root causes of shortcomings. Many different problems get in the way of effectively educating disabled students, and they arise at different stages of the educational process. They have different underlying causes. They vary by place and disability. Rather than replacing the one-size-fits-all compliance model with another monolithic approach, a new system should provide the incentives and flexibility to enable problems to be solved.

- **Residual rules that buttress the results obsession.** To the extent that some compliance obligations remain in place, they should be limited to those that enable the results-obsessed system to function properly. As we discuss below, certain aspects of the compliance model probably need to stay. However, in contrast to the current approach, which makes compliance paramount, we propose limiting compliance obligations to a minimal list that supports the overall results-orientation of the system by ensuring that goals are set for student learning, results are measured, and a safety net remains in place for students who still are not learning despite the system's intense new incentives for performance.

Using New Tools Within Special Education

This section frames a new approach to special education policy, drawing on lessons from other regulatory fields. We aim merely to set out a conceptual framework here with the understanding that it would require a great deal of elaboration and detail beyond the scope of this chapter to implement such a framework.

Intense incentives for performance. The main substitute for the old compliance model is a system of performance incentives to (1) maximize the degree to which students with identified special needs achieve (effective intervention); (2) maximize the chances that students with remediable special needs go "off the special education rolls" (effective remediation); and (3) minimize the incidence of preventable special needs in the first place (effective prevention). Like any good performance-management system, the approach we propose involves clear goals for performance, careful measurement of results, and the application of consequences based on those results. We do not address the difficult issue of how to measure results in this chapter and instead concentrate on the critical issues of goal-setting and consequences.

We propose limiting compliance obligations to a minimal list that supports the overall results-orientation of the system by ensuring that goals are set for student learning, results are measured, and a safety net remains in place.

Goal-setting up and down the system. We propose a system of goal-setting that is *nested, negotiated,* and *diverse.* Just as the current compliance system is "nested" (with federal constraints binding states, whose constraints bind local education agencies (LEAs), whose constraints bind schools, teachers, and contractors), so too must a system of goal-setting have this nested quality. As a nation we must have goals for states, which must have goals for LEAs, which must have goals for schools and contractors, which in turn have goals for individual students. It's possible to imagine two extreme ways to arrive at such a nested system: a top-down approach, in which the federal government dictates goals for states, which dictate goals for LEAs, and so on; or a bottom-up approach, in which schools (or other providers) set goals for students, which are rolled up into LEA-wide goals, which are in turn rolled up into statewide goals, which are finally rolled up into national goals. Each has its drawbacks. A purely top-down system would lack responsiveness to local needs and would have difficulty taking into account divergent starting points. It would run counter to the "problem-based" approach advocated in this chapter which calls for tailored responses to different problems. At the same time, a strictly bottom-up system would tend to generate mediocre, easy-to-reach goals and would foster unacceptable inconsistencies in the learning achieved by disabled students between one school or district and others.[33]

Our proposal represents a middle path in which entities at each level *negotiate* performance agreements with the next level up. These agreements would spell out in yearly or multi-year fashion the performance targets the entity is expected to reach. Because the higher-level entity has the final say, it can bring a degree of uniformity and ambition to the lower-level party's goals sufficient to allow the higher-level entity to meet targets agreed to with *its* controlling authority. But because agreements would be forged independently, they would have the capacity to reflect the particular situation of the entity in question. An LEA or state with one set of daunting challenges and a particular starting point might have a different set of goals for the year than does a neighboring LEA or state. A school facility operating an all-day pullout program for students with certain acute needs would have completely different goals from a "regular" school whose student body includes a small number of learning-disabled children.

Our proposal represents a middle [illegible] each spelling out the performance targets the entity is expected to reach.

As implied by the previous paragraph, these negotiated agreements would contain diverse types of goals. For example, a high school's agreement might contain goals regarding outcomes as varied as exceptional students' mastery of state standards (and their progress over time toward such mastery), scores on standardized tests (and changes over time in individuals' scores), achievement of more student-specific learning goals measured in other ways, graduation rates, and post-school outcomes such as employment. If the school housed unique populations or had distinct historical problems, its agreement might address those issues with goals unlike those of other high schools in an LEA. An LEA's agreement with the state might contain similar measures, aggregated across all its high schools, plus analogous goals at the middle and elementary levels. Like the high school example, if the LEA faced singular challenges (such as especially low performance of special-needs children of a particular race), its agreement might contain goals relevant to those issues.

At the bedrock of the goal-setting system are the goals set for individual students. In contrast to the current system, which mandates individual goals but does not make attainment its central focus, goals for individual students should become the guiding force for all activities within special education so that the attainment of goals by individual students would be the foundation for schools' achievement of *their* goals, which would in turn be the foundation for LEAs' attainment of *their* goals, and so on.

Consequences for performance. Though arguably the process of goal-setting and measuring would induce some improvements in performance, a full system of performance incentives needs consequences tied to progress toward goals. In particular, we must consider sanctions which might be applied to entities that fall short of their goals. Most obvious is withholding funds. Because special education is expensive and because most entities receive special education funds from the next level up the chain, this threat is likely to be potent. However, it is a blunt instrument that tends to involve all-or-nothing decisions, when in fact the performance picture for an LEA or state is likely to be mixed as it achieves goals in some areas but not others. Withholding funds also has perverse effects, penalizing students for the errors of educators (though these side effects can be mitigated by withholding administrative rather than program funds). Furthermore, high-stakes organizational punishments such as funding reductions for sub-par performance can create strong incentives to employ "creative" strategies for measuring and reporting results, a phenomenon that is often referred to as "gaming the numbers." Consequently, although withholding funds may be a viable *ultimate* sanction for agencies to wield, a fine-tuned system of performance incentives should offer more options. Here are some examples:

> *Census-based (rather than need-based) funding can create strong financial incentives to prevent and remediate without the threat of losing funds.*

- **Limited census-based funding.** To encourage entities to achieve certain kinds of goals—notably those having to do with preventing specific learning disabilities from developing altogether or eliminating learning disabilities that can be remedied over time—census-based (rather than need-based) funding can create strong financial incentives to prevent and remediate without the threat of losing funds.[34] In a fiscal system that provides more resources as more students are identified with special needs, states, LEAs, and schools have no financial incentive to engage in preventive or remedial activities. If the system provides parts of special education funding on a "census" basis—a certain amount per pupil, counting *all* the entity's students—entities acquire incentives to prevent and remediate learning disabilities. To account for differences in the incidence of these preventable and remediable learning disabilities, some kind of modified census system that adjusts for school-to-school or district-to-district differences would likely make sense. But the basic notion of providing built-in, self-enforcing incentives for achieving desirable outcomes is sound. Note, however, that this strategy works best for a limited class of disabilities. Pure census-based funding would create incentives for LEAs to find ways to exclude children with expensive disabilities altogether. LEAs that happened to have high proportions of children with expensive disabilities would face significant cost pressures. To avoid this, a fiscal system that blends census-based funding with funding linked to the actual presence of students with certain types of disabilities makes the most sense. Census funding works best for broader geographic entities, such as states and large districts, which are more likely to possess an average incidence of a given disability.

It is less appropriate for smaller LEAs and particular schools, which might by chance enroll disproportionately large numbers of such children.

- **Rewards for exceptional performance.** Another fiscal approach is to provide bonuses for exemplary performance. Bonuses can function at all levels of the system—federal bonuses to states, state bonuses to LEAs, LEA bonuses to schools, and LEA or school bonuses for teachers or other providers.

- **Market testing.** In many cases, it may be possible to create performance incentives by putting providers of special education to a market test, requiring them to compete with other potential providers for the "business" of a school or LEA. "Providers" could be organizations that deliver special education services, or they could be individual teachers. Either way, the idea is to make continued contracts or employment contingent on performance. In essence, this approach pushes the notion of performance agreements another notch down the chain, closer to the actual instructional process. Market testing is more acceptable than simply withholding funds because it does not penalize students for the poor performance of providers, except as they suffer from disruptions caused by changes in providers. This practice is already in use for providers of highly specialized placements and services, such as private facilities that offer residential treatment and services.

Giving individual families the opportunity to choose providers—with funding following children to the new provider—creates a more targeted form of performance accountability.

- **Offer family choice.** In contrast to the bluntness of a threat to withhold funds from an LEA, school, or provider, giving individual families the opportunity to choose providers—with funding following children to the new provider—creates a more targeted form of performance accountability. This approach would work better in some situations than others. Choice is less promising, for example, where the supply of providers is thin; more promising where many providers are eager to compete for students. This latter variable is not, of course, fixed, and policymakers eager to use this approach to promote accountability would do well to consider ways of stimulating the supply of effective providers of needed services. Such supply stimulation would be more likely if the funding that followed the child increased with the severity of the disability in question. (As described in Chapter 13, Florida recently instituted a program whereby families of special-needs students who do not meet the goals of their individualized education programs (IEPs) may select other providers, taking their special education funding with them.)[35]

- **Remove flexibility.** Another potential sanction is a return to command-and-control-style oversight. An entity that fails to meet performance targets could be placed on probation in which it must adhere to stricter procedural controls until its record improves. Note that such a removal of flexibility need not be an all-or-nothing move by an overseer; it could be applied to certain aspects of the process and not others (based on where the weaknesses lie), to certain kinds of disabilities, and so forth.

- **Using information-based approaches.** Finally, policymakers should not underestimate the power of transparency as a performance incentive. If schools, LEAs, states and federal officials know that the extent to which they are (or are not) achieving their goals with special-need students is going to be widely disseminated to parents, policymakers, the media, and the wider public, they are likely to focus more energy on achieving those goals.

With an array of possible accountability tools, an important question becomes how policymakers can blend them into a coherent system of consequences. What we propose here, once again, is a *nested* approach in which each level of the system takes two actions with regard to entities at the next level "down":

Why does the framework retain some elements of compliance and omit others? Our problem-solving orientation recognizes that there are some problems that are more successfully addressed with compliance approaches than others.

First, each level of the system sets consequences for the entities below it. Each level makes clear what consequences will result from different levels of performance, utilizing tools such as those noted above.

Second, each level empowers the entities below to use the full range of consequences in their own oversight of succeeding levels. The word "empowers" is key; in the envisioned system, Washington would neither require states to mete out any particular consequences for LEAs nor require LEAs to deal with their schools and providers in any particular fashion; nor would it forbid any such actions. Rather, federal policy would make clear that these entities may use the full range of consequences in their efforts to induce performance from those they oversee. By the same token, state policy would make clear that LEAs are free to use the full arsenal in their oversight of schools and providers.

It is worth noting that, although different tools are easier to use at different levels, there is no reason to restrict their use to one level or another. For example, market testing is most obvious as a strategy for an LEA or charter school. It becomes more difficult to devise a market-testing approach that a state could use in its oversight of LEAs, and more difficult still to devise a federal market test for states. But state agencies facing strong pressures from the federal government to produce results would have an incentive to investigate such an option. For certain specialized services, for example, it might be possible for a state to contract directly with another provider rather than route funding to a low-performing LEA. What is important is that states be empowered to pursue such options as they see fit and that they face strong incentives to pursue strategies that are likely to yield results.

Residual base of essential compliance obligations. In addition to the basic obligation to educate all children, including those with disabilities, we suggest four fundamental processes that local education agencies (and states) should be responsible for carrying out. First, LEAs should continue to be required to identify potential special-needs children and assess those special needs. Second, for each child so identified and assessed, LEAs should be required to establish year-by-year goals for the student's learning—again reinforcing the fundamental results orientation of special education policy. Third, LEAs should be required to assess students' progress on these goals and report the results to parents, schools, the state, and the public. Finally, LEAs should be required to involve and inform parents and guardians throughout this process. States should monitor LEAs' compliance with these obligations and disseminate their own reports on compliance and progress toward meeting goals.

In cases where IEPs, "least restrictive environments," specially certified personnel, and highly choreographed committees produce the best outcomes for students, schools will likely use them even when not required to do so.

Readers will likely note that this list retains a significant degree of procedural compliance but omits several significant aspects of the current regime. Omissions include the requirement that each student have an IEP, specific requirements about the nature of IEPs (such as the mandate that students be placed in the "least restrictive environment"), limitations on the type of personnel that can work with special-needs children, and stipulations about the membership of committees that oversee the residual procedural requirements (beyond the required involvement of parents).

Why does the framework retain some elements of compliance and omit others? The answer lies in the problem-solving orientation laid out above; there are some problems that are more successfully addressed with compliance approaches than others. The problems singled out for continuing compliance regulation share two important characteristics:

First, addressing them is essential to the results-oriented approach of the proposed system. Without knowing which children have disabilities—and the nature of those disabilities—it is impossible to set goals and measure performance for their learning. As we discussed in Chapter 3, without having a clear set of goals for each student and measuring progress toward them, it is impossible to judge the progress of students, schools, LEAs, states, or the nation as a whole. Without widely reporting the results of those measurements, it is impossible for LEAs, states, the federal government, and families to exercise the strategies envisioned here. If families are not in the loop, the system loses (potentially) the most effective and self-managing accountability mechanism of all—the needs and priorities of the ultimate "client."

Second, they require a basic "safety net" to help ensure that no child falls through the cracks. One potential pitfall of an approach that relies heavily on performance measurement is that it tends to focus on aggregate results. Under such an approach, it is possible for a system (like an LEA) to meet all of its performance goals even as a subset of students fails to learn. To the extent that such failure is due to lack of effort by—or incompetence among—school officials, a safety net can be helpful. Part of that net can be built into a performance-based system through the use of customer choice which—unlike other possible consequences—focuses not on aggregate numbers but on the performance of individual students and the satisfaction of their families. The compliance requirements outlined here enhance that safety net, helping to assure that individual students are not ignored by the system.

Omitted steps—such as the required IEP, rules prescribing the nature of education programs for disabled students, restrictions on personnel, and stipulations about committee makeup—all lack one or both of these characteristics. Although it is plausible that these omitted steps can contribute to good outcomes for special-needs children, there is no reason to think they are *essential*. Indeed, current experience makes clear that even with all these trappings, many disabled students receive a poor education. Well-structured performance incentives and family choice can produce better overall results than these procedural requirements. In cases where IEPs, "least restrictive environments," specially certified personnel, and highly choreographed committees produce the best outcomes for students, schools will likely use them even when not required to do so.

A perfect system of measurement is a chimera, but policymakers can move toward a results-based system even though measurement systems are imperfect.

Enabling "smart regulation." Within the limited scope of residual compliance obligations, states and LEAs would be free to use "smart regulation" to increase the level of compliance, reduce its burden, or, most importantly, enhance the results achieved. Because the essence of smart regulation is the use of creative strategies to induce desired behavior in particular situations, it is impossible to lay out in the abstract all forms that smart regulation might take in special education. But it is possible to offer some illustrations:

- **Addressing underlying causes.** A state finds that an LEA chronically fails to meet its compliance goals regarding identification and assessment of certain kinds of disabilities. State officials realize that this LEA is plagued by turnover of personnel needed to assess these conditions. Conversations with other districts that have similar compliance issues reveal that they face similar problems. The state responds by working with select LEAs to (1) create a training institute to boost the supply of needed experts, or (2) use Internet and satellite technology to give LEAs access to a statewide pool of specialists.

- **Negotiated solutions with technical assistance.** Much like OSHA's Maine 200 program, the state identifies the LEAs with the most severe compliance difficulties. It asks them to develop acceptable plans for boosting their compliance and outcomes or face a thorough inspection of their operations.

Though these two examples illustrate smart regulation, the idea is not to mandate such tactics from Washington but to encourage federal, state, and local officials to use such approaches as they pursue their goals within the broader context of the performance incentives they face. In order to meet their performance targets, agencies would utilize Professor Sparrow's problem-solving methodology on a regular basis—identifying problems, devising approaches using diverse tools, monitoring results, and moving onto the next problem.

Challenges

The framework outlined above is not without transition problems. Here are several:

Measurement. Most of the proposed strategies require significant specification and measurement of outcomes. Although special education has moved in this direction in recent years, problems still bedevil efforts to assess how students, schools, LEAs, states, and the nation as a whole are performing; and the IDEA's 1997 amendments did not adequately solve these problems. Because special-needs students are, by definition, more severely challenged than regular students in their quest for educational achievement, we particularly urge that any performance measurement system (1) either eschew special testing accommodations or use the same accommodations consistently for a given student, and (2) focus on gains in test scores rather than whether a given pupil reaches a fixed achievement level. A perfect system of measurement is a chimera, but policymakers can move toward a results-based system even though measurement systems are imperfect. In any case, a major investment of state, federal, and local resources in improved goal-setting and measurement systems is a must for the success of this proposal, and for most other worthwhile reforms of special education.

Personnel. One challenge faced universally by regulatory agencies that have reinvented their oversight systems is the fact that today's personnel are not necessarily equipped for their new tasks.[36] Under the proposal outlined here, special education agencies would shift much of their resources to tasks like defining outcomes, devising measurement systems, negotiating performance agreements with entities under their jurisdictions, monitoring outcomes, and creating innovative problem-solving strategies that utilize tools beyond the enforcement of rules. Though special education agencies do some of these things now, as mentioned in Chapter 3, significant retooling, in the form of professional development and new hiring, would likely be needed.

> A perfect system of measurement is a chimera, but policymakers can move toward a results-based system even though measurement systems are imperfect.

The civil rights question. Current special education regulation rests upon a civil rights foundation. Students are entitled to due process and certain kinds of treatment, and they may pursue litigation if they believe their rights have been violated. This proposed set of reforms retains some aspects of due process, requiring that LEAs identify and assess children for special needs, set goals for their performance, monitor and report progress, and involve and inform families. But other aspects of current due process would vanish, to be replaced by strong performance incentives. Unfortunately, as in any system (including the current compliance-based one), some students could slip through the cracks in a performance-oriented system. An LEA, for example, could meet or exceed all of its goals for the year, even as some individual students within the system are poorly served. Could those youngsters sue the LEA for neglecting their specific needs, even as the LEA met its general performance goals? If so, would the threat of litigation induce the special education system to cling to today's compliance approach as a defense mechanism? In line with the new focus on results suggested above, could the civil rights of students with disabilities be redefined from a "right to be served" to a "right to be educated"? We pose these as questions to be addressed among the many challenges that any significant reform of an entrenched system invariably faces.

Conclusion

This outline of a new policy framework does not explore all the ramifications or supply all the details that would need to be worked through. What is most important is the set of underlying principles—the obsession with learning results; the provision of a wide range of tools to participants in the system; and the limited, residual base of compliance requirements. Where we have suggested details, we remain open to alternative approaches as long as they live up to these principles. In fact, we believe that "openness to alternatives" may be what is needed most in special education, where it is common for any criticism of the status quo to be taken as an attack on disabled children. Unless people involved in this policy area are willing to weigh proposals for change, it is difficult to imagine that progress will be made. We hope the ideas set forth here will generate that kind of open discussion.

The accountability system governing special education is beginning to evolve away from a "one-size-fits-all" compliance system; we think policymakers should accelerate this evolutionary process.

Though it centers on results, the system of accountability and effectiveness oversight that we advocate relies upon a mix of performance incentives, professional judgment, and limited rule-based compliance. As such, it is a hybrid of the three "pure" types of accountability systems of hierarchy, markets, and clans discussed in Chapter 3. Each of those regimes has strengths and weaknesses that make it a particularly good or bad fit for various aspects of special education. Today's system is itself a hybrid: it remains heavily influenced by the hierarchical compliance model, yet at times places its trust in "clan-like" organizations of professionals even as market-inspired "results-based" performance systems and requirements have begun to be incorporated into it. The accountability system governing special education is beginning to evolve away from a "one-size-fits-all" compliance system; we think policymakers should accelerate this evolutionary process.

One-size-fits-all systems are common in part because they are easy. Unified systems of rules and procedures are relatively easy to justify, design, document, and communicate to interested parties. They also feature less ambiguity than the alternative system we propose here. In the context of special education, our proposal would require that we rely heavily upon the informed judgments of professionals in the special education field. We expect that, with the sort of performance incentives we envision, the vast majority of those judgments will prove to be sound ones that redound to the benefit of children with special needs. Still, any accountability system that admits to ambiguity and relies upon professional judgment will produce the occasional mistake. If such mistakes become scandals, then the entire accountability system will be vulnerable to attack and modification. All regulatory systems, even those that fit the compliance model, are susceptible to mistakes and subsequent backlashes. However, it is more difficult to defend results-based systems with claims that personnel were "simply following the rules" or that the agency involved was in "full compliance" with existing standards. Thus, we might expect the alternative system for special education accountability and oversight that we present here to prove not only difficult to obtain, but also even more difficult to sustain. Still, we think the ineffectiveness of the current compliance model of oversight does a great disservice to many of our country's most vulnerable children. We think there is a better way.

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[1] See, for example, Mark K. Landy, Mark J. Roberts, and Stephen R. Thomas, *The Environmental Protection Agency: Asking the Wrong Questions* (Oxford: Oxford University Press, 1990); National Academy of Public Administration, *Resolving the Paradox of Environmental Protection: An Agenda for Congress, EPA, and the States* (Washington, DC: National Academy of Public Administration, 1997); and National Academy of Public Administration, *Setting Priorities, Getting Results: A New Direction for the Environmental Protection Agency* (Washington, DC: National Academy of Public Administration, 1995).

[2] See Susannah Zak Figura, "The New OSHA," *Government Executive*, May 1997 (available at <<http://www.govexec.com/features/0597s4.htm>>); and Sidney A. Shapiro and Randy S. Rabinowitz, "Punishment Versus Cooperation in Regulatory Enforcement: A Case Study of OSHA," *Administrative Law Review* 49, no. 4 (1997).

[3] See Steven Kelman, *Procurement and Public Management: The Fear of Discretion and the Quality of Government Performance* (Washington, DC: American Enterprise Institute, 1990); and Jack H. Knott and Gary J. Miller, *Reforming Bureaucracy: The Politics of Institutional Choice* (Englewood Cliffs, NJ: Prentice-Hall, 1987).

[4] See Malcolm K. Sparrow, *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* (Washington, DC: The Brookings Institution, 2000), 22. Numerous critiques and discussions of regulatory problems exist, including Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Philadelphia: Temple University Press, 1982); Eugene Bardach and Robert A. Kagan, eds., *Social Regulation: Strategies for Reform* (San Francisco: Institute for Contemporary Studies, 1982); Robert W. Crandall, et al., *An Agenda for Federal Regulatory Reform* (Washington, D.C.: American Enterprise Institute, 1997); Robert W. Hahn and Robert E. Litan, *Improving Regulatory Accountability* (Washington, DC: American Enterprise Institute and Brookings Institution, 1997); and Phillip K. Howard, *The Death of Common Sense: How Law is Suffocating America* (New York: Random House, 1994).

[5] See, for example, Stephen G. Breyer, *Breaking the Vicious Cycle: Toward Effective Risk Regulation* (Cambridge, MA: Harvard University Press, 1993).

[6] See, for example, Marver Bernstein, *Regulating Business by Independent Commission* (Princeton: Princeton University Press, 1955).

[7] See Organization for Economic Cooperation and Development, *OECD Report on Regulatory Reform: Synthesis* (Paris: Organization for Economic Cooperation and Development, 1997); and Organization for Economic Cooperation and Development, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* (London: OECD Public Management Service, 1995).

[8] Thomas Hopkins, *Regulatory Costs in Profile* (St. Louis: Washington University Center for the Study of American Business, 1996), 5.

[9] See Committee for Economic Development, *Modernizing Government Regulation: The Need for Action* (New York: Committee for Economic Development, 1998); Crandall et al., *An Agenda for Federal Regulatory Reform*; John D. Graham, "Legislative Approaches to Achieving More Protection Against Risk at Less Cost," *University of Chicago Legal Forum* 13 (1997): 13-58; Robert W. Hahn, "Achieving Real Regulatory Reform," *University of Chicago Legal Forum* 13 (1997): 143-158; and Hahn and Litan, *Improving Regulatory Accountability*.

[10] See Archon Fung, "Smart Regulation: How Government is Marshalling Firms and Citizens to Protect the Environment," *Taubman Center (Harvard University) Annual Report* (2000), 2-3.

[11] See Ian Ayres and John Braithwaite, "Designing Responsive Regulatory Institutions," *The Responsive Community* 2, no. 3 (1992); Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press, 1992); Mary Graham, "Putting Disclosure to the Test," *Taubman Center (Harvard University) Annual Report* (2000), 6-7; Neal Shover, Donald A. Clelland, and John Lynxwiler, *Enforcement or Negotiation: Constructing a Regulatory Bureaucracy* (Albany: State University of New York Press, 1986).

[12] See Sparrow, *The Regulatory Craft*, 86-87.

[13] Ibid., 22; see also Elizabeth Glass Geltman and Andrew E. Skroback, "Reinventing the EPA to Conform with the New American Environmentality," *Columbia Journal of Environmental Law* 23, no. 1 (1998): 1-56.

[14] See Graham, "Putting Disclosure to the Test."

[15] Archon Fung, "Reinventing Environmental Regulation from the Grassroots Up: Explaining and Expanding the Success of the Toxics Release Inventory," *Environmental Management* 25, no. 2, (2000): 115-127.

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[16] Allan V. Burman, "Federal Marketplace," *Government Executive*, April 1999 (available at <<http://govexec.com/procure/articles/0499mark.htm>>).

[17] Sparrow, *The Regulatory Craft*, 23.

[18] See ibid.

[19] See Cary Coglianese, "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking," *Duke Law Journal* 46, no.6 (1997): 10.

[20] See David Osborne and Peter Plastrik, *Banishing Bureaucracy: The Five Strategies for Reinventing Government* (New York: Penguin Group, 1997), 23-30.

[21] See David Osborne and Ted Gaebler, *Reinventing Government* (Reading, MA: Addison-Wesley, 1992), 223-26.

[22] See Program on Innovations in American Government, *2000 Finalists*, available from <<http://www.innovations.harvard.edu/Finalists/2000/index.html>>.

[23] Refer to Figure 1 in Chapter 3 for the essential elements of a results-measurement accountability system.

[24] For example, in their work on improving the performance of government organizations, Osborne and Plastrik list performance management as the least desirable of several approaches to imposing "consequences" for performance, favoring instead (where practical) the more market-oriented approaches discussed in the next section. See Osborne and Plastrik, *Banishing Bureaucracy*.)

[25] For a probing discussion of these issues in the education setting, see Richard Rothstein, "Toward a Composite Index of School Performance," *Elementary School Journal* 5 (2000): 411-417.

[26] This section focuses only on customer choice because of its relevance to special education, in which there are readily definable "customers." Another significant variant is "tradable permits," of which the most prominent examples have emerged in the environmental field. Regulators have set overall targets for the amount of certain pollutants that they are willing to tolerate, issued permits to potential polluters allowing (in the aggregate) the targeted level of emission, and created marketplaces in which permit-holders can buy and sell the right to emit different amounts of pollutants. See Allen V. Kneese and Charles L. Schultze, *Pollution, Prices, and Public Policy* (Washington, DC: The Brookings Institution, 1975); Richard Kosobud and Jennifer Zimmerman, eds., *Market-Based Approaches to Environmental Policy* (New York: Van Nostrand Reinhold, 1997); and Thomas Schelling, *Incentives for Environmental Protection* (Cambridge, MA: MIT Press, 1983).

[27] For examples, see Michael Barzelay and Babak Armanjani, *Breaking through Bureaucracy: A New Vision for Managing in Government* (Berkeley: University of California Press, 1992); and Osborne and Plastrik, *Banishing Bureaucracy*.

[28] Sparrow, *The Regulatory Craft*, 43.

[29] See ibid., 255-278.

[30] Ibid., 113.

[31] See, for example, Herman Goldstein, *Problem-Oriented Policing* (New York: McGraw-Hill, 1990); and Sparrow, *The Regulatory Craft*.

[32] See Sparrow, *The Regulatory Craft*, 251-252.

[33] The argument for goals set at higher levels parallels arguments within regular education for having statewide rather than local standards for student learning.

[34] See Richard Rothstein, "Rethinking Special Education Without Losing Ground," *New York Times*, 5 July 2000, sec. B, p. 12. For more on preventable and remedial disabilities and their policy implications, see Chapters 2 and 12 in this volume.

[35] See Chapter 13 in this volume.

[36] See Sparrow, *The Regulatory Craft*, especially 155-170, 224-237, and 255-278.

Chapter 3

Effectiveness and Accountability (Part 1): The Compliance Model

*Patrick J. Wolf and Bryan C. Hassel**

A recent article in *The Washington Post* revealed some alarming features of the special education program in our nation's capital. Special-needs students languish in inappropriate school settings for years before the District of Columbia's public school system conducts an initial assessment of their disabilities and assigns them to a special program or school that might promote their educational progress. It is unclear how or even whether "progress" is defined for special education students in the D.C. system. Administrators confessed to *Post* reporter Justin Blum that they "do not know how many special education students graduated (from high school) last year." Although an elaborate reporting system is in place, one that requires special education teachers and administrators to complete reams of paperwork, Blum reported that "there are serious errors at nearly every step of the process and...missing documents and unreturned phone calls hinder efforts to correct them." The D.C. Office of Special Education even advises people to ignore graduation rates reported in previous years because they are totally unreliable.[1]

How do we know whether special education is working in the United States, and how do—and should—we define "working" in this context?

Experts estimate that $35-60 billion is spent each year to provide a "special" education to disabled children in the United States. The wide range of cost estimates itself hints at an insufficient level of accountability in these programs, while also provoking the important question of what society is receiving as a return on its substantial investment in special education. In this chapter, we address critical questions regarding what standards of effectiveness are used to evaluate the progress of children receiving special education services and what accountability systems operate to track and report their progress. In other words, how do we know whether special education is working in the United States, and how do—and should—we define "working" in this context?

The chapter focuses primarily on the "compliance model" of accountability that currently governs most special education programs. Compliance accountability is a form of monitoring and oversight that stresses *documentation* of various processes and activities, including initial assessment, pupil assignment, reassessment, reassignment, and the use of education funds.

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Within a compliance model, effectiveness tends to be defined in terms of whether or not procedural regulations were satisfied, the proper steps taken, and the right paperwork processed correctly and on time. The compliance view of accountability is deeply entrenched in the history, theory, and practice of government involvement in special education in the United States despite recent efforts to "reinvent" special education by focusing more on educational results. Ironically, the compliance model fails even to ensure widespread compliance with federal and state laws and regulations, while generating unexpected, undesirable outcomes and perverse incentives.

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Having laid bare the nature of the current compliance model for accountability and effectiveness in special education, we proceed in Chapter 14 to describe possible alternative models and assess their strengths and weaknesses. We think that it is possible and desirable to define success more appropriately for children with special educational needs, and to design monitoring systems that accurately reveal useful information about how well we are serving these vulnerable youngsters.

Definitions

Many important special education terms are defined in other chapters. Here we focus on clarifying what is meant by effectiveness, accountability, and the compliance model. "Effectiveness" is a measure of goal achievement. An effective program achieves the goals that have been set in advance for it. The goals themselves may be focused on resources (for example, inputs), processes and activities (services), results (outcomes), or the social consequences of the results (as impacts).[2] Impacts and outcomes are generally considered to be superior to services and input effectiveness criteria, because they focus on what a program or agency actually accomplishes, not merely what it expends or what it does.

"Accountability" is advanced when individuals and organizations are held responsible for the operation and effectiveness of programs and institutions under their control. Thus, achieving accountability requires that accurate performance information be collected and reported in some public venue. Accountability systems in the government sector seek to enable a clear and accurate "accounting" of what has been accomplished through the use of public funds and the operation of public programs. They also serve as a means for holding public officials and private contractors "accountable" for the lack of accomplishments or the misuse or abuse of public funds and programs.

Up to this point, the compliance model has dominated effectiveness and accountability considerations and activity in special education. According to this model, effectiveness is largely defined in terms of the prescribed expenditure of resources and the execution of correct processes and activities that are mandated by special education laws and regulations. A major assumption of the compliance model is that the correct operation of the special education "process" implies actual "progress" for special-needs students—meaning that greater inputs and services generate desirable outcomes and favorable impacts. To ensure accountability, the compliance model requires that every step of the special education process be thoroughly documented. Other major assumptions are that the issuance of regulations and documentation of compliance with those regulations (1) ensure that public funds and programs are not being misused and (2) provide a complete and accurate public record of what is being accomplished regarding the education of students with special needs. As we will see, the compliance model is being challenged by contemporary special education reforms, and an examination of how it operates in states, communities, and schools strongly suggests that such a challenge is overdue. But first we will examine more carefully the theory undergirding the compliance model.

Effectiveness and Accountability in Theory

The compliance model of accountability in special education is intended to solve the "agency problem" that is inherent in policy implementations which rely upon delegation of authority.[3] Principal-agent theory, as applied to policy implementation and oversight, holds that the formulators and overseers of policy are "principals" who delegate the task of actual implementation of policy to subordinates, or "agents." Principals and their agents are assumed to have more or less diverse, even divergent preferences and goals for policy implementation. At the extreme, some rational-choice theorists contend that agents will tend to "shirk" the implementation work, "subvert" the policy goals of their principals in order to further the agents' own purposes, and even "steal" whatever program resources they can.[4] To solve this "agency problem," the designers and overseers of policy need to operate an accountability system that will mitigate the supposed tendency of subordinates to shirk, subvert, and steal. The "agency problem" is essentially an accountability problem. Because the operators who actually deliver services to people might not do so in the "proper" way if left to their own devices, we must design a system to compel their proper behavior or force them to account for improper behavior.

To ensure accountability, the compliance model requires that every step of the special education process be thoroughly documented.

According to economist William Ouchi, there are three general ways by which organizations can address the agency problem. They can be organized as a bureaucracy, a market, or a clan.[5] Bureaucracies, including most government organizations, use administrative hierarchies of supervision to address the agency problem. Organizations that rely on market forces to diffuse the agency problem include many entrepreneurial businesses. Organizations that take the form of clans to address the agency problem include families, sports teams, and many nonprofit agencies.

Table 1 describes the basic components of accountability systems employed by the three general types of organizations. We will modify Ouchi's terminology slightly by referring to his bureaucracy model as a *compliance* model, his market model as a *competition* model, and his

Table 1. General Models for Addressing the Agency Problem

Model	**Theme**	**Focus of Effectiveness**	**Ex Ante Accountability**	**Ex Post Accountability**	**Rewards**	**Sanctions**
Bureaucracy (Compliance)	Heavy Hand	Activities (Processes)	Rules and Regulations, Certification	Paperwork, Audits, Hearings	Continued Funding, Jurisdiction	Written Warnings, No Promotion, Decertification
Market (Competition)	Hidden Hand	Outcomes (Results)	None	Consumer Choice	Increased Revenue, Increased Salary, Continued Operation	Loss of Revenue, Bankruptcy
Clan (Community)	Helping Hand	Varied	Values and Norms	Reputation	Praise, Role Enhancement	Scolding, Role Reduction, Banishment

clan model as a *community* model of accountability.

The compliance model traditionally focuses on organizational activities or processes.[6] What tends to be most important under the compliance model is what people do, how much they do, and how they do it. At the front end, the compliance model prescribes the formulation of elaborate rules and explicit regulations to guide the behavior of agents. It relies upon a heavy hand to shape and enforce behavior. Compliance accountability systems often require some form of credentialing (such as teacher certification) before an agent is allowed even to operate within the system.

After operations have begun, the *compliance* model calls for accountability checks that generally involve documentation of organizational activities and workflows that can later be audited by overseers. Agents that are judged to have operated according to the rules and procedures set by the principal tend to be rewarded with continued responsibility for their programs. Where organizational paperwork reveals a lack of compliance on the part of an agent, however, the agent may be issued a warning, denied promotion, or even decertified. For example, a military officer who fails to comply with the regulations of his service may first receive a "letter of reprimand." If the officer receives several such reprimands, he may be passed over for promotion to a higher rank. If noncompliance worsens, the officer may be involuntarily discharged from the service.

The competition model relies upon consumer choice to enforce accountability.

The *competition* model of accountability provides a sharp contrast to the compliance model. Its focus of effectiveness usually is on outcomes or results, not activities and processes. Generally, correct procedures are not specified in advance. This model relies upon the hidden hand of market incentives to shape behavior. The goal is to achieve the "bottom line" in whatever way you can.

The *competition* model relies upon consumer choice to enforce accountability. If consumers like what the agency is doing, and have reason to believe that its positive performance will continue, they will support it. If they are disappointed with the services provided by the organization and other options are available to them, they will take their business elsewhere. James Q. Wilson has referred to this system of accountability as permitting "clients to vote with their feet."[7]

Government agencies employing the competition model may construe the idea of "consumer" in one of two ways. One approach regards the ultimate beneficiaries of the government service as consumers and gives them the power to vote with their feet in selecting the provider of the service. In the education arena, for example, policymakers can give families the ability to use a "voucher" to pay tuition so that their children can attend a preferred school. In this variant of the competition model, agents are held accountable in that, if they fail to convince beneficiaries to "buy" their services, they go out of business. The other variant regards government agencies as consumers who buy products from other governmental units or outside contractors. In education, for example, a state education agency might select a certain educational assessment company (in lieu of a competitor company) to provide the instruments for the agency's testing regime.

Agents that achieve positive outcomes under a *competition* model of accountability are rewarded with bonuses or increased revenue and the ability to stay in business. Conversely, agents that fail to achieve positive outcomes (or whose customers vote against them with their feet) will be denied salary bonuses, docked pay, and, if the agent falls well short of the performance goal, possibly fired. Organizations that fail to achieve their outcome targets may lose revenue, forfeit the contract with the principal, and, as a result, risk bankruptcy. Market models of accountability are non-directive at the front end; however, the rewards and sanctions under such a system can be dramatic at the tail end of operations.[8]

> **"Agents that achieve positive outcomes under a competition model of accountability are rewarded with bonuses or increased revenue and the ability to stay in business."**

Performance measurement is not unique to the *competition* model of accountability. Organizations that are structured as bureaucracies (or even clans) often can and sometimes do measure their performance. Performance measurement is more common in systems of competition, however, because managers who face market rewards and sanctions value information about how well their programs and employees are doing. Because they do not want customers to go elsewhere, managers and organizations that face high stakes competition regularly assess performance in order to nip problems in the bud and identify productive programs and employees in which to invest additional resources.

The third type of accountability system is the *community* model. Organizations that function as communities view effectiveness as context-dependent. They will focus on impacts and outcomes if what they are doing is amenable to those effectiveness criteria; however, they will pay close attention to services and processes if more results-oriented effectiveness measures would be inappropriate. John DiIulio illustrates this point in his portrayal of the Federal Bureau of Prisons (BOP) as a clan or community-type organization.[9] If a jailbreak or riot has occurred, BOP personnel will do whatever it takes to catch the fugitive or quell the disturbance, consistent with preserving the safety of innocent people. Such an approach represents a results emphasis. However, during the daily operations of BOP facilities, staff members focus on the standard operating procedures and rule-based behaviors that their principals have specified for them. Such an approach represents a process emphasis.

Clan-like organizations can make quick adjustments in how they operate and what they emphasize because they rely upon values, norms, and relationships, not hierarchy or regulations, to guide members' behavior. This model employs a helping hand to shape behavior. Several scholars have pointed out that Catholic schools tend to have a strong sense of community because their administrators and teachers usually share a set of educational, personal, and spiritual values that shape the environment of the school and the behavior of those in it.[10] Such norms and values often include concern for the welfare of every student, emphasis on the importance of cooperation, a focus on mastering basic skills, and insistence on maintaining a clean and orderly school. School leaders are confident that staff members share their values and that they therefore need not prescribe what teachers do in classrooms. Because of shared values, principals can be assured that teachers will take appropriate actions when confronted with various situations. As DiIulio notes, such "strong culture" organizations address the principal-agent problem by relying upon operators who are "principled agents."[11]

Agencies can be distinguished from one another based on whether their outcomes can be reliably measured and unequivocally ascribed to agency actions and policies

With principled agents delivering services to the organization's clients, community-based agencies often do not overly concern themselves with *ex post* accountability instruments. Their leaders instead tend to rely on their own constant readings of whether the community is thriving and, if not, what might be done to improve its condition. Operators and clients who have performed particularly well in the view of the leader might receive praise during a community gathering or have their roles within the organization enhanced in some way. Operators and clients who have performed poorly in the view of the leader might receive a private admonition, role reduction, or, in extreme cases, banishment from the community.

Each of these three models of accountability has certain theoretical advantages. The *compliance* model ought to be more reliable and consistent than the *competition* or *community* models, because its rules of behavior are clearly specified in advance and adherence to those rules is monitored. With the compliance model, agents and clients know up front what they must do and how they can expect to be treated. By contrast, the *competition* model has virtues of flexibility and adaptability. Agents can use whatever appropriate and creative means they think will advance the organization's goals. Moreover, market-based organizations receive clear feedback from customer decisions and comments regarding what is and is not working, and they can adjust accordingly. Because *community* models of organizing rely upon personal allegiance to norms and values instead of rules and supervision or customer information to ensure accountability, they tend to be the most efficient means for addressing the agency problem. However, an important limitation of the *community* model, with its heavy reliance on the culture of the organization, is that it tends to succeed only within the confines of individual agencies. A principal that needs to control the behavior of agents in different organizations, sectors, and levels of government, as in special education, would find it difficult to do so using culture alone.

Choosing an Accountability Model for Special Education

Which type of accountability system would be best for special education? The eminent political scientist James Q. Wilson has developed a typology of government organizations that provides us with guidance regarding this important question.[12] According to Wilson, agencies can be distinguished from one another based on whether their outcomes can be reliably measured and unequivocally ascribed to agency actions and policies. They also differ based on whether a clear technology or single method of operating applies to the agency's mission. Agencies with measurable results and clear ways of doing things are considered to be *production* agencies, according to Wilson. Because they are so favorably situated, production agencies can employ any of the three accountability models successfully. Agencies with unmeasurable outcomes but clear technologies are called *procedural* agencies. Because what is to be done is clearer than what is achieved, the compliance model of accountability is generally used for procedural agencies. Bureaucracies with measurable outcomes but various viable technologies are considered to be *craft* agencies. The competition model of accountability is best suited to craft agencies because of its emphasis on results, such as consumer choices, that can be measured. Finally, agencies with neither measurable results nor single ways of doing things are called *coping* agencies. Because their missions involve uncertainty regarding both process and result, the community model is the best system for promoting effectiveness and accountability in these agencies.

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Where does special education fit into this typology? Schools themselves are properly treated as craft agencies, according to Wilson. There is little agreement as to precisely how teachers should conduct the process of educating their students; however, standardized tests and other assessments do offer the ability to measure student achievement, at least regarding the skills and topics covered by the exams. Thus, regular education would appear to lend itself to accountability systems based on performance measurement that are typically part of the market model. However, special education is different. It is difficult to measure accurately the educational achievement of certain students with special needs. As such, at least some special education students and programs may reasonably be considered coping projects. For them, the community model of accountability may be most appropriate.

Clearly, special education is not a procedural or production mission. The education landscape is littered with pedagogical approaches and reforms that were billed as trustworthy technologies for helping all students to learn.[13] Even less certainty surrounds approaches to teaching students with special needs. Fierce battles continue over whether deaf students should be taught orally or using American Sign Language, and whether non-English-speaking students should be immersed in English or receive the bulk of their instruction in their native tongue.[14] Many educators and policymakers have behaved as if a single sure technology exists for all special education situations, but in reality the variety and intensity of demands posed by special-needs children seem certain to frustrate attempts to specify in advance precisely what special education must consist of, as opposed to what it should accomplish.

The example of a private educational center for emotionally disturbed students illustrates these challenges. At the time of our visit, the center enrolled 53 students in grades 1-12, with an average class size of four students.[15] Nearly half of the staff were professional counselors. The intensive psychological therapy and small class sizes that characterized the program came at an annual cost of $36,000 per student, which was borne by the local county school system for all of the children in the school.[16]

This organization closely fits the "clan" model. Effectiveness is defined in various ways, depending on context. Effectiveness measures include a student's level of participation in the activities of therapy sessions and behavior in class, as well as the outcomes of learning coping skills and transitioning from the program back to a regular school. Nearly half of the students sent to the school make sufficient progress in their therapy and education programs to transfer to a "less restrictive" school environment. School administrators refer to such outcomes as "transitioning out" of the school under "favorable" or "successful" circumstances.[17] A small number of students—typically one or two but sometimes none in a given year—remain in the school through 12th grade and thus formally graduate from the high school component of the center.[18] The students who neither transition out of the center successfully nor graduate from its high school leave the school "unsuccessfully" by quitting the program prematurely. The center's failure rate of about 50 percent is considered very low, given the propensity of emotionally disturbed students to quit special education programs and school itself.[19]

Measuring results that can be appropriately attributed to special education interventions can be challenging.

Although students are tested each year in accordance with state guidelines, the test results are primarily used for diagnostic purposes. The teachers advocate customized testing of their students "in their best medium" and at the time of day when a given student tends to be most balanced emotionally. They claim that, for some severely emotionally disturbed students, getting them to remain in their chair for an entire class (a process measure) might be the most appropriate measure of progress.[20] The teachers who work with emotionally disturbed students every day at this school consider their job to be primarily a coping mission.

The environment and operation of the school are shaped by a set of values that produces a strong and distinct culture. The values include openness, informality, trust, personal responsibility, and flexibility. These values, and the academic activities that take place at the school, are all oriented toward addressing the emotional problems that are the source of each student's disability. As the director stated, "The learning that takes place in the classroom is therapy."[21] Students refer to teachers, counselors, and administrators by their first names to prevent them from being intimidated by the intensity of the classroom and counseling sessions that comprise each school day. Students are encouraged to take ownership of the school; pictures of each student adorn the hallway, and student leaders are given the authority to assign maintenance tasks to other students and ensure that the tasks are completed properly. A high school student was selected to provide us with a tour of the school, unchaperoned. The teachers are extraordinarily flexible and accommodating; they readily greeted us as we were ushered into classrooms, primarily while classes were in session. Most of the classes consisted of small group projects or individual tutorials. The junior high and high school students serve as mentors for the elementary school students. On the morning that we visited, the regular high school English classes were replaced by a student-led poetry "slam."

Particularly in the area of special education, accountability systems tend to combine elements of more than one model.

Even this "clan-like" school is required to participate in many compliance-oriented oversight activities. The school must maintain its accreditation in order to receive referrals from various public school jurisdictions in the area. Staff members participate in the development, implementation, and annual review of progress toward the goals of individualized education programs (IEPs). Administrators must complete a blizzard of paperwork in order to justify their operations and be reimbursed by the county for their services. The efficacy of this exercise in documentation is questionable, however. As the director told us:

> The amount of paper we generate for accountability purposes to the county and state is enormous.... But I don't know if it's effective because I have no idea...what they're using it for, you know what I mean? ...I present them with a [budget] packet that is an inch thick every year.... I don't know...who does what to it all. And I always wonder, 'Is this being used?'[72]

Finally, the school is subject to market accountability. Although its student body is the result of referrals from various public schools in the region, many of the referrals are based on parental demands (backed by legal counsel) that the child be assigned to this particular school. Moreover, the county may refer emotionally disturbed students to any of more than 100 public and private school programs in the area. The director told us, "Every year I worry if we'll have enough kids to pay the staff. And always it works out.... Our middle school is full, basically. The high school is about full, and I've got a lot of referrals coming in. And the elementary school is—basically, it will be full. Every year it sort of works out, and you try the best you can and continue."[73] The positive reputation and high success rate of the center are important reasons why it has been allowed to continue to teach and counsel emotionally disturbed students.

A teacher we interviewed at the center described a particularly innovative aspect of the program. Every Thursday is a work day at the school. The students are organized into landscaping and maintenance work crews, with student supervisors elected by the community of staff and students. That way, said the teacher, "the students learn to work with each other and for each other and over each other."[74] The students are paid by the center for their work, with their pay grade determined by regular evaluations of their work by peers and center staff, "so they are very much held accountable for their ability to be part of their team and get the job done."[75] On "work day," the students are organized into a bureaucracy, motivated by market incentives, and evaluated by the fellow members of their clan.

This private, nonprofit school for special-needs students exemplifies the conclusions of this chapter. First, we see that measuring results that can be appropriately attributed to special education interventions can be challenging. At the extreme, the standardized outcome measures central to performance-based accountability may be either impossible to obtain or inappropriate measures of achievement. Second, particularly in the area of special education, accountability systems tend to combine elements of more than one model. Real-world examples of pure compliance, competition, or community models of oversight and accountability are rare. What distinguishes one system from another is whether its central tendency is oriented toward compliance, competition, or community. Third, compliance aspects of the special education oversight system are designed and implemented in ways that may not contribute to, and actually may undermine, accountability. In the following sections we explore further the imprecise, poorly targeted, hybrid nature of past and present systems used to hold people accountable for effectiveness in special education.

A compliance regulatory system has dominated the oversight of special education programs since responsibility for such programs became increasingly federalized in the 1960s.

The Emergence of the Compliance Model in Special Education

A compliance regulatory system has dominated the oversight of special education programs since responsibility for such programs became increasingly federalized in the 1960s. This reliance on compliance regulation may have resulted from a desire to guarantee positive outcomes, organizational culture, the fear of litigation, or all of these.

Children with special educational needs rightly evoke sympathy. Policymakers and implementers may be especially motivated to seek a guarantee that all such students receive appropriate educational interventions, and that no special-needs student is neglected. Thus, they might be tempted by the heavy hand of compliance oversight and the apparent (but not always real) guarantees of universal and appropriate service that it promises. This can occur in spite of the fact that the definition of "appropriate" will vary significantly by type and severity of disability and even change over time (due to advances in research, technology and pedagogy).

Government organizations have a propensity for the process regulation that is central to compliance oversight.[26] As Max Weber explained, formalization generates clarity, standardization, and reliability that can make the job of the bureaucrat more manageable.[27] Some researchers have argued that public education in America suffers from a culture that is particularly quick to formalize and bureaucratize.[28] Because the compliance model's forms of process regulation admit less ambiguity and tolerate less variety, they can also provide protection against litigation. Civil rights tend to be defined in terms of procedures, such as "equal access" and "due process." Thus, when special education is wrapped in the language of rights, policy implementers may seek procedural regulations of the compliance model as protection against legal claims of impropriety. This tendency may be particularly strong in special education, as children with special needs are legally guaranteed an "appropriate education" in "the least restrictive environment." Because disputes over the operational definitions of these ambiguous terms tend to be settled by the courts (see Chapter 10), implementers seek legal protection by engaging in compliance-model process regulation.

A brief history of special education policy reveals how all three forces—sympathy, organizational culture, and fear of litigation—appear to have played a role in making compliance-style oversight central to the special education accountability system. Prior to the 1950s, states, localities, and community organizations provided most of the educational services for children with disabilities with no federal funding or oversight, under conditions that were variable, uneven, often unequal, and frequently separate.[29] Advocates for people with disabilities drew upon the example of *Brown v. Board of Education of Topeka* and the civil rights movement for inspiration and direction in seeking similar access and equity for children with special needs.[30] The first federal laws concerning the education of special-needs students were the Education of Mentally Retarded Children Act of 1958 and the Elementary and Secondary Education Act of 1965. Both measures provided funding meant to improve the quality of special education; however, neither law contained meaningful accountability mechanisms.

The first federal special education laws with oversight teeth were Section 504 of the Rehabilitation Act of 1973 and the Education for All Handicapped Children Act of 1975 (EAHCA). The former required states and localities to ensure that disabled children be granted access to education programs and facilities. The latter mandated that all children with disabilities receive a "free appropriate public education" and that it take place in the "least restrictive environment." The least restrictive environment for a particular student would be determined by a group of interested parties including the child's parents, various diagnosticians, and educators from the local school district. Their decisions would be codified in an IEP that would serve as a guide to everyone participating in the child's schooling. An outgrowth of public sympathy regarding the educational needs of many children with disabilities, the EAHCA invited a compliance and process-oriented accountability system because, like so much pioneering civil rights legislation, it combined legal guarantees with ambiguous terminology.

> The EAHCA invited a compliance and process-oriented accountability system because it combined legal guarantees with ambiguous terminology.

During the 1970s and 1980s, special education advocates tackled some of the ambiguity by promoting "mainstreaming" as the proper method of educating students with disabilities.[31] This approach again mirrored the civil rights strategy, then popular in advocacy and legal circles, of addressing racial segregation in public schools by integrating them, even using forced busing when necessary. The process-oriented goal was to expose previously excluded classes of students (such as students with disabilities or racial minorities) to the same educational program and environment as their peers. However, just as many minority students were "tracked" within schools in ways that prevented them from being exposed to most of their non-minority classmates,[32] concerns emerged that mainstreamed special-needs students were not truly being integrated into the life of their schools. Therefore, in the 1990s, the emphasis on mainstreaming gave way to an emphasis on inclusion.[33]

Fully including disabled students in all school activities on an equal basis with their peers has not proven to be the clear solution for addressing student needs that was anticipated. In some cases, full inclusion is impossible or even counter-productive. A student with a severe physical disability obviously will not be able to play on the school's football team, although he may be included in the activity as a team manager. Stronger inclusion problems emerge in cases of deaf or severely emotionally disturbed students. Because deafness is a communication impairment, and many deaf people communicate using a distinctive language (American Sign Language), "deaf schools" have persisted as separate places where students can learn in that language and become steeped in their culture, all contrary to the precepts of inclusion. An excellent example of this "celebration of differentness" is Gallaudet University, which operates as an institution of higher education exclusively for deaf and hearing-impaired students, though it is federally funded and overseen by the U.S. Department of Education. Emotionally disturbed students present another case-in-point. Full inclusion of many such children in a regular school would deny them the customized environment and intensive therapy sessions that they need to address their particular disabilities. In such cases, inclusion may mean unequal and ineffective treatment.

Fully including disabled students in all school activities on an equal basis with their peers has not proven to be the clear solution for addressing student needs that was anticipated.

Recently, the process orientation of the compliance model has been challenged by the movement in education circles to emphasize academic standards and results. Standards-based reform in regular education has drawn special education along, as analysts and policymakers confront the compliance model's limitations for ensuring that students with special needs are actually learning. The desire that effectiveness in the special education arena be defined in terms of educational outcomes, and that educators be held accountable for their results, was manifested in the 1997 amendments to the Individuals with Disabilities Education Act (IDEA).

Effectiveness and Accountability Under the IDEA

The mandates contained within the 1997 amendments of the IDEA (IDEA '97) regarding effectiveness are too vague and allow too many exceptions to represent a true "sea change" from previous special education effectiveness mandates. The section of the law that deals with "Performance Goals and Indicators" (P.L. 105-17, Sec. 612(a)(16)) merely requires that: (1) states have "goals for the performance of children with disabilities"; (2) the goals "promote the purposes of this Act"; and (3) the goals be consistent "with other goals and standards established by the State" with the qualifier "to the maximum extent possible." Clearly, states still retain a great deal of discretion in deciding how performance and success are defined for their disabled students.

The reporting requirements of the IDEA (Sec. 612(a)(17)) are heavily qualified and include important loopholes. They require states, for example, either to include special education students in regular statewide assessments (with or without special accommodations) or to develop "alternative assessments" for such students. The one area in which the mandates appear to have real teeth is in requiring that each state make public the following: (1) "the number of children with disabilities participating in regular assessments"; (2) the number opting out via alternate assessments; and (3) the performance of each group on their respective assessments. States are still able to use various means to exempt special education students from standard achievement tests; however, they are now required to report how many of their disabled pupils have been excluded.

Most importantly, the effectiveness and accountability requirements in the IDEA include no rewards and only weak sanctions. There is no explicit mechanism for rewarding states that actually demonstrate significant progress in educating their disabled students. The Secretary of Education is authorized to withhold federal funding from states or localities that are found to be out of compliance with the IDEA but is not required to do so (Sec. 616(a)). Moreover, the IDEA extends the right of appeal to educational jurisdictions that are punished for non-compliance (Sec. 616(b)). Financial sanctions for IDEA violations thus appear unlikely, and we are aware of just one or two instances in which they have even been threatened.

As we read them, the 1997 effectiveness and accountability provisions of the IDEA include elements that could, if strictly enforced, inject a strong measure of results-orientation into the oversight of special education. Yet, many of those provisions are optional or highly discretionary. The fundamental compliance model emphases on *ex ante* procedural prescriptions and *ex post* audits of resources expended and activities conducted remain strong. IDEA '97 includes 13 pages of text describing the intricacies of 13 separate procedural safeguards with which teachers and administrators must still comply (Sec. 615(a-m)). Moreover, the Act specifies seven procedural approaches, described as proven methods for advancing special education, that include "whole-school" intervention, better coordination, greater reliance on classroom aides, and more training for special education teachers (Sec. 601(c)(A-G)). In short, reports of the death of the compliance model of effectiveness and accountability in special education appear to be greatly exaggerated.

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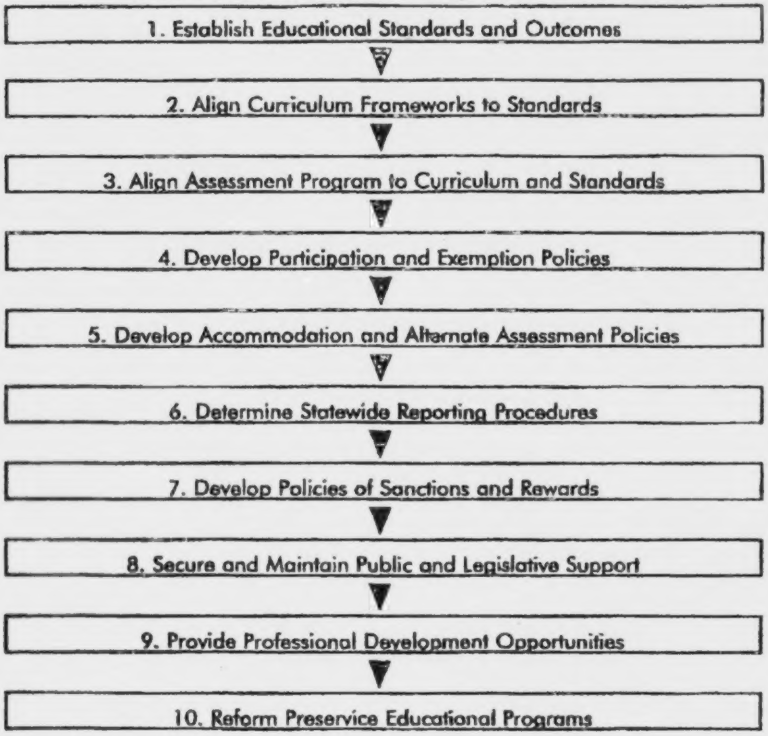
IDEA Reforms: The Vision and Process

An express purpose of the 1997 IDEA amendments was to focus the oversight system for special education on educational outcomes (Sec. 601(d)(4)). According to Ronald Erickson of the Regional Resource and Federal Center Network, the performance-based accountability system required by IDEA '97 must include at least 10 critical components.[34] Although Erickson configured them as spokes on a wheel, we have reproduced them in Figure 1 as discreet steps in an implementation flowchart. The first step is to establish consistent standards and outcome targets for special-needs students. Next, curriculum and testing programs must be aligned to the educational standards and goals. Policies must be set for determining which special-needs students must participate in the testing and what accommodations should be provided to them. Procedures must be established for reporting test results, and additional policies must be developed to reward good performers and penalize bad ones. The final three tasks in the flowchart may appear to be improperly placed at the end, as opposed to the beginning, of the process. However, public and legislative support is as often earned at the end as it is granted at the outset of an implementation process. Similarly, expanding access to and revising the content of professional training programs might be more appropriately accomplished after a performance monitoring system is up and running and providing information and feedback to overseers.

To what extent does the post-1997 oversight system designed by the U.S. Department of

Figure 1. Flowchart of Necessary Steps for Results-Based Effectiveness and Accountability Under IDEA '97


1. Establish Educational Standards and Outcomes
2. Align Curriculum Frameworks to Standards
3. Align Assessment Program to Curriculum and Standards
4. Develop Participation and Exemption Policies
5. Develop Accommodation and Alternate Assessment Policies
6. Determine Statewide Reporting Procedures
7. Develop Policies of Sanctions and Rewards
8. Secure and Maintain Public and Legislative Support
9. Provide Professional Development Opportunities
10. Reform Preservice Educational Programs

Source: Adopted from Ronald Erickson, "Special Education in an Era of School Reform: Accountability, Standards, and Assessment" (Federal Resource Center, January 1998), p. 5.

Education reflect the performance-based model that we have derived from Erickson's work? Unfortunately, the answer is "not very much." The federal government's monitoring system deviates from a well-designed performance oversight system in several important ways. First, in many respects it merely adds a results-based definition of effectiveness to a process-based accountability system. Second, it omits critical components of a results-based accountability system. Third, it leaves the fox in charge of the henhouse. Finally, it still includes certain perverse incentives.

The Department of Education's Office of Special Education Programs (OSEP) has designed an accountability system in response to the 1997 IDEA amendments that appears to pay lip service to standards and testing, while continuing to emphasize procedural compliance. The official OSEP guide to the 2001 monitoring process that is provided to state and local special education administrators is replete with references to "compliance" and "process."[35] The first page of the manual describes how, "In order to ensure *compliance* with IDEA '97...OSEP designed a multifaceted *process*...."[36] Granted, it is described as "an outcome-oriented *process*"[37] that is focused on "improving results."[38] Yet the document suggests to education providers that the self-assessment that drives the accountability system should focus on performance and "adherence to pertinent Federal and State regulations, policies, and procedures."[39] The core of the self-assessment is a series of interviews "to confirm information from the records reviewed and to gather information about local procedures for referral, evaluation, placement, service delivery, and how discussions are made and documented."[40] In short, this important government manual is still designed to prepare state and local officials for compliance-based procedural oversight, not for a results-oriented performance regime.

Several essential components of a results-based effectiveness/accountability model are absent from the OSEP system. These include educational standards and outcome goals, curriculum and assessment alignment, rewards for demonstrated effectiveness, and the reform of pre-service education programs for teachers and other special education staff. Also lacking are consistency in decisions regarding the use of special accommodations and alternative tests for special education students, and predictable consequences for either failing to implement the monitoring system or for adverse results. The last two of these weaknesses especially endanger performance accountability. The testing accommodations provided to special education students can involve variations in the timing, setting, presentation of, or method of responding to the achievement tests. Such policies permit endless variations in possible testing conditions from student to student and year to year, modifications that could yield false signs of performance gains.[41] Regarding sanctions, note the permissive language in the OSEP monitoring manual that:

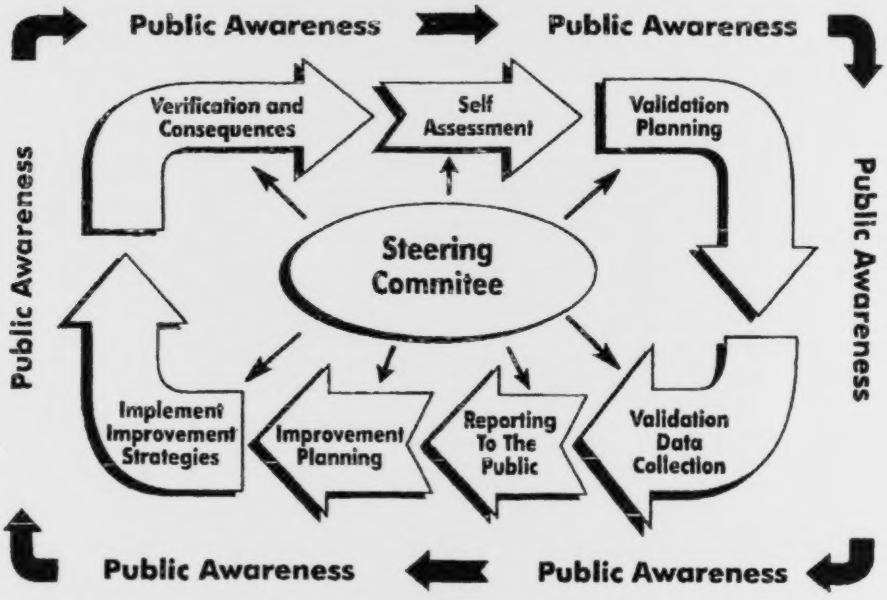
The Office of Special Education Programs' approach to accountability permits the fox to guard the henhouse.

> If a state does not implement the mandatory components of the improvement plan, or implementation is not effective, OSEP may impose sanctions, which could include OSEP's prescription of corrective actions for compliance, a compliance agreement, withholding funds in whole or in part, or other enforcement actions.[42]

We doubt that such nebulous and uncertain provisions leave special education administrators shaking in their boots.

These weaknesses in the design of the special education accountability system become particularly clear when we contrast Figure 1, on the necessary steps for results-based effectiveness and accountability depicted linearly, with Figure 2, which is the actual monitoring process figure from page 8 of the OSEP manual. Two aspects of Figure 2 are striking. First, as with Erickson's original scheme, the wheel-shape of the figure is intended to signal that the monitoring process is continuous, having no "end" in sight. Second, the hub of the wheel is not the well-being of the special-needs child. Instead, the process is centered around a steering committee. Certainly an accountability system consisting of continuous motion centered around the dictates of a committee was not what reformers envisioned when they crafted IDEA '97!

Figure 2. OSEP Continuous Improvement Monitoring Process


Public Awareness
Public Awareness
Verification and Consequences
Self Assessment
Validation Planning
Public Awareness
Public Awareness
Steering Commitee
Implement Improvement Strategies
Improvement Planning
Reporting To The Public
Validation Data Collection
Public Awareness
Public Awareness

Source: Office of Special Education Policy, U.S. Department of Education, 2001 *Monitoring Manual*, p. 8.

OSEP's approach to accountability still permits the fox to guard the henhouse. The Local Educational Agencies (LEAs) that are the "agents" whose performance is to be overseen are themselves allowed to set the agenda, assess their own performance, and recommend data sources and contacts for the external evaluation of their performance.[43] The "self-assessment" that begins the process is planned and executed by the same large steering committee of stakeholders that is literally central to the monitoring process.[44] With the target of the oversight controlling the front end of its own monitoring process, it is unlikely that many criticisms will be forthcoming. As the LEA is being evaluated, OSEP works with it "to plan strategies for validating the self-assessment results...."[45] As with the inspection process of the Occupational Safety and Health Administration in the U.S. Department of Labor, which is often characterized as seriously flawed,[46] OSEP warns the sites that are to be monitored: (1) when inspectors are coming; (2) what they will be asking about; and, (3) that site administrators should select personnel and parents to be interviewed by the overseers.[47] Based on the content of their own oversight manual, OSEP overseers appear to be more "enablers" than "monitors."

Finally, the current "outcome-based compliance system" for special education has the potential for generating perverse incentives. Studies indicate that "high stakes" accountability systems discourage the inclusion of disabled students in testing regimes.[48] Thus, overseers may be forced to choose between encouraging the maximum participation of special-needs students in testing programs by assuring school districts that they will not be punished for poor results, or threatening to penalize poorly performing districts at the risk of encouraging them to exclude special education students from testing. Also, longitudinal gain-scores are more revealing and reliable measures of progress than absolute ability scores, but they are also more costly and difficult to obtain. Not surprisingly, they seldom are the focus of government educational assessments, a practice that continues under IDEA '97.[49]

In sum, the accountability system that has resulted from IDEA '97 appears to hold little promise of solving the "agency problem" in a conclusive or efficacious fashion. The number of regulations in the oversight process and its procedural-compliance focus have not diminished. We are aware of only one significant procedural requirement that was eliminated by IDEA '97—the requirement that students with permanent disabilities, such as blindness, be re-certified as having a disability every three years. Instead, results and performance measurement rhetoric and procedures have merely been grafted onto a barely modified compliance model of accountability. To be sure, redundant and hybrid models of accountability are common in governmental programs. Still, the "outcome-based compliance system" for special education appears to retain the onerous procedural requirements of the previous system—and adds more!—yet omits components that are essential to holding implementors accountable for results. The plethora of regulations implies a strong distrust of agents by their principals; yet the monitoring process is so cooperative and permissive that it implies tremendous trust in agents by principals. In other words, the compliance process is not internally consistent. These weaknesses become clearer when we examine the actual operation of the "outcome-based compliance system."

> *The "outcome-based compliance system" for special education appears to retain the onerous procedural requirements of the previous system—and adds more!—yet omits components that are essential to holding implementors accountable for results.*

IDEA Accountability in Practice

Since 1991, the National Center on Educational Outcomes, a research institute at the University of Minnesota, has been studying the implementation of special education reforms aimed at promoting performance-based accountability.[50] Its December 1999 report (NCEO Report) presents the results of its National Survey of State Directors of Special Education regarding the implementation of IDEA '97. The survey results largely reinforce the central claims of this chapter that performance-based accountability is not yet being achieved in special education.

The Record on Effectiveness

Defenders of IDEA '97 like to define effectiveness in terms of outcomes such as rising test scores. However, the NCEO Report confirms that program overseers still focus on process or output questions such as what percent of special education pupils are being tested and whether they are being educated in the "least restrictive environment."[51] As discussed above, teachers and administrators who work with disabled students often prefer to define success individually, in terms of progress in small, sometimes unquantifiable ways. For example, the students at the private special education school for emotionally disturbed children that we visited are required to work, under direction of student supervisors, to maintain the school's grounds. The purpose is to teach them personal responsibility and interpersonal skills within a work environment. The school staff members view a student's success in completing his maintenance work as an important indicator of progress, despite the fact that it would not fit the standard definition of a results-based accountability indicator. Many educators of special-needs pupils are surely obtaining positive outcomes; however, those positive results are not necessarily induced by or even reflected in the IDEA '97 accountability system.

The Record on Accountability

The NCEO Report confirms our suspicion that the compliance approach to accountability has not been replaced, just supplemented with a testing regime. More special education students are being tested, and most states are reporting the results of those tests (in absolute, not gain-score terms) in compliance with IDEA '97. However, states vary greatly in: (1) the proportion of their special education students who are tested; (2) the proportion who take the regular test with no accommodations; (3) the proportion who take the regular test with accommodations; (4) the types of accommodations granted to students with similar disabilities; (5) the proportion of students who take an alternative assessment; (6) the nature of the alternative assessments that are given to students with similar disabilities; and, most importantly, (7) the performance standards that are applied to special education students.[52] As opposed to "letting 1,000 flowers bloom," which is the standard justification for permitting state-by-state variation in policy implementation, the type and degree of variation by state that is described here prevent overseers from comparing apples to apples when evaluating the performance garden.

States report that the greatest difficulty teachers and administrators face on the ground is aligning IEP goals with state assessment rules and regulations.

So much paperwork is generated to plan for testing and demonstrate compliance that no one is able to take the time to process or review the data in order to learn what is and is not working and actually hold people accountable for effectiveness and results. State special education directors claim that the lack of resources prevents them from collecting and acting on more accountability data.[53] Most states have issued an elaborate set of rules and regulations regarding IDEA '97 testing that tends to produce paperwork without even achieving consistency. States report that the greatest difficulty teachers and administrators face on the ground is aligning IEP goals with state assessment rules and regulations, Step 3 of the results-based accountability process in Figure 1.[54] Yet 20 of the 34 state directors surveyed still listed "more written policies" as what is most needed to meet IDEA '97 requirements.[55] It would seem that these people are so steeped in the culture of compliance that they have come to view more rules and regulations as an acceptable solution.

At this point, we do not know the extent to which states, localities, and schools are providing excessive or inconsistent accommodations to disabled students who take the regular assessments, or subjecting other special education students to an alternative assessment that is oriented more to input or "process" than to outcomes or "results." The NCEO Report does confirm that special-needs students are excluded from testing mainly due to the perception of administrators that high stakes are involved.[56] Those wary administrators might relax if they examined the OSEP monitoring process manual carefully and saw the many reassuring components of the federal oversight system that we discussed above. Moreover, most states encourage districts and schools to disaggregate test scores into disabled and non-disabled subgroups for reporting and assessment purposes. This practice, which is a component of President Bush's education accountability initiative, would prevent the achievement scores of special education students from dragging down the average score, although it also would generate incentives to classify poorly performing students as suffering from disabilities, even if the reason for their bad performance is motivational or instructional.

Only one third of the states report that they are implementing rewards or sanctions for schools and districts based on disabled students' testing results. Another half of the states say they are developing, revising, or planning such systems.[57] The reward and sanction system being developed in Tennessee appears to hold the most promise to capture performance, as it is to be based on "educational value added."[58] However, two states, Alabama and Connecticut, still reward persistently low-performing districts and schools with more money.[59] We might characterize their accountability systems as based on a "non-performance results model."

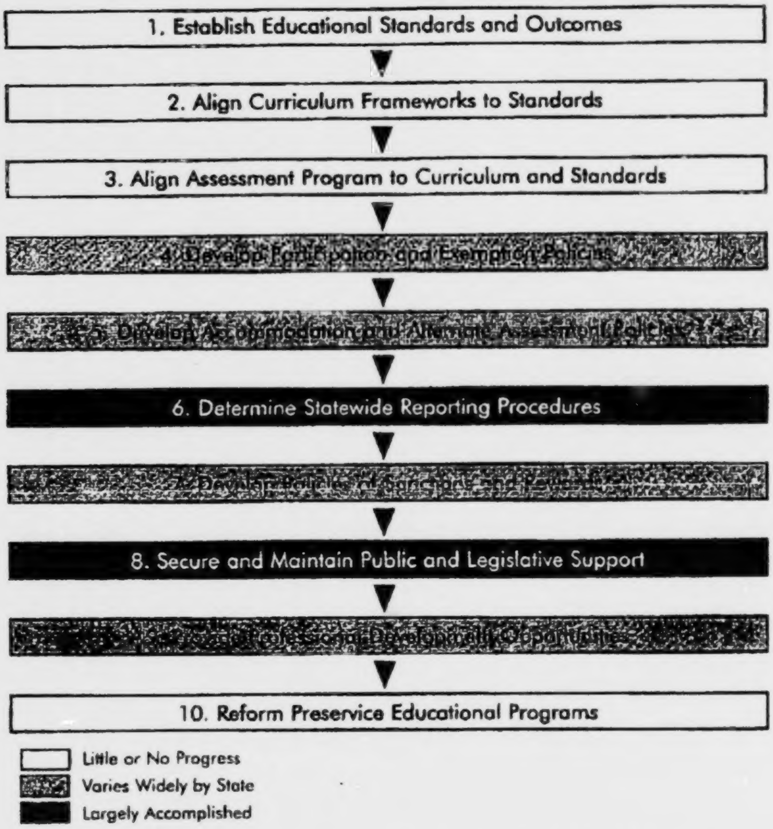
The "results-oriented compliance" effectiveness and accountability system now being implemented in the wake of IDEA '97 appears to be flawed in theory, design, and practice.

Conclusions

The 1997 IDEA amendments were widely touted as reforms that would extend the results-based effectiveness and performance-based accountability revolution in U.S. education to students with special needs. It was hoped that such a regime shift would complete the transformation of the educational status of disabled youngsters from widespread neglect prior to the 1980s, through general inclusion in the 1990s, to educational achievement in the 21st century. We find that such noble aspirations have yet to be realized.

The extent to which the IDEA '97 oversight system measures up to the requirements for a performance-based accountability system is demonstrated in Figure 3. Just two of the ten necessary steps for performance accountability (darkly shaded) have clearly been accomplished. Reporting procedures have been established in every state, and support for performance-based accountability in special education among the public and policymakers has generally been secured. Some other important components of an effective system may be in place, depending on the state. Yet for four critical steps in the accountability process, little or no progress has been made. At what should be the front-end, educational standards and achievement goals for special education students have not been standardized (possibly because they cannot be), special education curricula have not been modified in light of the (nonexistent) standards, and assessment programs have not been aligned to the curricula and standards (which themselves are moving targets). At the tail-end of the process, the training of special education teachers and administrators has not been modified to account for a shift from procedural accountability under the compliance model to results accountability under the performance model, arguably because no such regime shift has occurred.

Figure 3. Progress Towards a Result-Based Accountability System Post-IDEA '97


1. Establish Educational Standards and Outcomes
2. Align Curriculum Frameworks to Standards
3. Align Assessment Program to Curriculum and Standards
4. Develop Participation and Exemption Policies
5. Develop Accommodation and Alternate Assessment Policies
6. Determine Statewide Reporting Procedures
7. Develop Policies of Sanctions and Rewards
8. Secure and Maintain Public and Legislative Support
9. [illegible] Professional Development Opportunities
10. Reform Preservice Educational Programs
Little or No Progress
Varies Widely by State
Largely Accomplished

Source: Adapted from Ronald Erickson, "Special Education in an Era of School Reform: Accountability, Standards, and Assessment," Federal Resource Center, January 1998, p. 5.

The "results-oriented compliance" effectiveness-and-accountability system now being implemented in the wake of IDEA '97 appears to be flawed in theory, design, and practice. It is flawed in theory because it still uses oversight practices that assume teachers, schools, districts, and states are untrustworthy, even while trusting them with the keys to the castle during the monitoring process. Teachers or schools that are failing to address the educational needs of students with disabilities can easily escape notice and punishment under the current system. The accountability system is flawed in design because, instead of replacing a rules-driven process with a results-driven oversight system, it merely piles more rules regarding performance assessment onto the process-based compliance system that remains largely intact—and awash in paperwork. The many teachers and administrators who are doing well by their special education students are merely saddled with additional documentation responsibilities that divert their time and resources away from more educationally focused functions. Finally, the system is flawed in practice.

The effectiveness and accountability system that has emerged from IDEA '97 does not represent a major shift from the compliance model of the past 25 years.

For results-based accountability to work, it must set clear goals for performance, clear rules for the measurement of outcomes, and clear consequences for performance and nonperformance. Within those clear guidelines, the system can (and should) allow all kinds of variability in how states, districts, and schools go about meeting their goals. But IDEA '97, viewed as a national program, permits too much state-by-state variability in standards, participation, testing conditions, and rewards/sanctions for the testing of special education students to establish clear results for which we might legitimately hold states accountable. Moreover, states with real teeth in their own results-based accountability systems—commonly called "high stakes" testing—face perverse incentives to exclude special education students or provide them with such generous accommodations that their "success" on the tests is all but assured. Incredibly, some states even reward, with increased funding, local school districts whose special education students are falling further behind.

President Bush's current education initiative holds the prospect of solving one of these problems. His requirement that the scores of students with disabilities who participate in accountability assessments be reported separately could remove the temptation to exclude such children from high-stakes testing.[60] However, a host of additional improvements would need to be made in the accountability system surrounding special education before we could declare it to be an effective results-oriented accountability system.

In short, the effectiveness and accountability system that has emerged from IDEA '97 does not represent a major shift from the compliance model of the past 25 years. Indeed, this new "compliance plus testing" model may offer the worst of both worlds in that it does not even succeed in ensuring compliance with the many rules and regulations that drive it. The traditional incrementalism of policy reform in the United States is still failing to produce a sound accountability system in special education. Could there be a better way? We explore that question in Chapter 14.

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[1] See Justin Blum, "D.C. Schools Still Neglect Some in Special Education," *Washington Post*, 2 October 2000, sect. A, p. 1.

[2] See Patrick J. Wolf, "Why Must We Reinvent the Federal Government? Putting Historical Developmental Claims to the Test," *Journal of Public Administration Research and Theory* 7, no. 3 (1997): 355, 362.

[3] Patrick J. Wolf, "Authority, Delegation," in *The International Encyclopedia of the Social and Behavioral Sciences*, eds. Neil J. Smelser and Paul B. Baltes (Oxford, England: Pergamon Press, forthcoming 2001).

[4] See Ronald H. Coase, *The Firm, the Market, and the Law* (Chicago, IL: University of Chicago Press, 1988).

[5] See William G. Ouchi, "Markets, Bureaucracies, and Clans," *Administrative Science Quarterly* 25, no. 1 (1980): 129-141.

[6] See Michael Barzelay with Babak Armajani, *Breaking Through Bureaucracy* (Berkeley, CA: University of California Press, 1992).

[7] James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic, 1989), 364.

[8] See Charles L. Schultze, *The Public Use of Private Interest* (Washington, DC: Brookings, 1977).

[9] See John J. DiIulio, Jr., "Principled Agents: The Cultural Bases of Behavior in a Federal Government Bureaucracy," *Journal of Public Administration Research and Theory* 4, no. 3 (1994): 277-318.

[10] See John E. Brandl, "Governance and Educational Quality," in *Learning From School Choice*, eds. Paul E. Peterson and Bryan C. Hassel (Washington, DC: Brookings, 1998), 55-81; and Anthony S. Bryk, Valerie E. Lee, and Peter B. Holland, *Catholic Schools and the Common Good* (Cambridge, MA: Harvard University Press, 1993).

[11] John J. DiIulio, Jr., "Principled Agents," at 277.

[12] See James Q. Wilson, *Bureaucracy*.

[13] See Lynn Olson, "The Common Good," *Education Week in Review*, 27 January 1999, available at <<http://www.edweek.org/ew/vol—18/20access.h18>>; and Diane Ravitch, *Left Back: A Century of Failed School Reforms* (New York: Simon and Schuster, 2000).

[14] See Ben Wildavsky, "A Blow to Bilingual Education," *U.S. News and World Report*, 4 September 2000.

[15] Interview with the principal of a private school for emotionally disturbed students, 27 September 2000.

[16] Interview with the director of a private school for emotionally disturbed students, 27 September 2000.

[17] Interview with the principal.

[18] Ibid.

[19] Ibid.

[20] Interview with a teacher at a private school for emotionally disturbed students, 27 September 2000.

[21] Interview with the director.

[22] Ibid.

[23] Ibid.

[24] Interview with a teacher.

[25] Ibid.

[26] See Herbert Kaufman, *Red Tape: Its Origins, Uses, and Abuses* (Washington, DC: Brookings, 1977); and Robert K. Merton, "Bureaucratic Structure and Personality," in *Reader in Bureaucracy*, eds. Robert K. Merton, et al. (New York: Free Press, 1952).

[27] See Max Weber, "Essay on Bureaucracy," in *Bureaucratic Power in National Politics*, ed. Francis E. Rourke (Boston, MA: Little Brown and Company, 1965).

[28] See John E. Chubb and Terry M. Moe, *Politics, Markets and America's Schools*, (Washington, DC: Brookings, 1990).

[29] There were notable exceptions such as Gallaudet University, America's first institution of higher education for hearing-impaired students, which was established in 1856 and was brought under federal funding and control in 1857.

[30] See Joetta Sack, "Bringing Special Education Students Into the Classroom," *Education Week in Review*, 27 January 2000, available at <<http://www.edweek.org/ew/vol—18/20inclus.h18>>.

[31] See ibid.

[32] See John E. Chubb and Terry M. Moe, "Politics, Markets, and Equality in Schools" (paper delivered at the American Political Science Association Annual Meeting, Chicago, IL, September 1992).

[33] See Joetta Sack, "Bringing Special Education Students Into the Classroom."

[34] See Ronald Erickson, "Special Education in an Era of School Reform: Accountability, Standards, and Assessment" (a product of the Federal Resource Center, Regional Resource and Federal Center Network, January 1998), 5.

[35] See United States Department of Education, Office of Special Education Programs, "Continuous Improvement Monitoring Process: 2000-2001 Monitoring Manual" (Washington, DC: Academy for Educational

Development, n.d.).

[36] Ibid. at 3 (emphasis added).

[37] Ibid. at 4.

[38] Ibid. at 7.

[39] Ibid. at 10.

[40] Ibid. at 33.

[41] See Ronald Erickson, "Special Education in an Era of Reform," at 26.

[42] United States Department of Education, "Continuous Improvement Monitoring Process," at 9.

[43] See ibid. at 24.

[44] See ibid. at 10.

[45] See ibid. at 7.

[46] See Kitty Calavita, "The Demise of the Occupational Safety and Health Administration: A Case Study in Symbolic Action," *Social Problems* 30, no. 44 (1983): 437-448; and John Mendeloff, *Regulating Safety: An Economic and Political Analysis of Occupational Safety and Health Policy* (Cambridge: MIT Press, 1979).

[47] United States Department of Education, "Continuous Improvement Monitoring Process," at 24.

[48] See Ronald Erickson, "Special Education in an Era of Reform," at 7.

[49] See ibid. at 9-10.

[50] National Center on Educational Outcomes, "1999 State Special Education Outcomes: A Report on State Activities at the End of the Century" (December 1999), available at <<http://www.coled.umn.edu/NCEO/OnlinePubs/99StateReport.htm>>.

[51] See ibid.

[52] See ibid.

[53] See ibid. at 39.

[54] See ibid. at 29.

[55] Ibid. at 39-40.

[56] See ibid. at 20.

[57] See National Center on Educational Outcomes, "1999 State Special Education Outcomes," at 33.

[58] Ibid. at 44.

[59] See ibid. at 43.

[60] President George W. Bush, "No Child Left Behind," Summary of the President's Education Initiatives, 23 January 2001, at 8.

APPENDIX D - WRITTEN STATEMENT OF GREGORY LOCK, PRINCIPAL, OAK VIEW ELEMENTARY SCHOOL, FAIRFAX, VA, TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP), ALEXANDRIA, VA

NAESP

NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS

Serving All Elementary and Middle Level Principals

SPECIAL EDUCATION IMPLEMENTATION: PRISONERS OF PAPERWORK

Testimony before the Subcommittee on Education Reform
Committee on Education and the Workforce
U.S. House of Representatives

Gregory Lock
Principal
Oak View Elementary School
Fairfax County, Virginia

May 2, 2002

Good morning, Mr. Chairman and members of the subcommittee. I am Gregory Lock, principal of Oak View Elementary School in Fairfax, Virginia. I have been a principal for the children of the Fairfax County Public Schools for 15 years. It is an honor to come before you today, representing the National Association of Elementary School Principals (NAESP), as you deliberate possible changes when reauthorizing the Individuals with Disabilities Education Act (IDEA). I recognize that there are many aspects of IDEA that you will be considering in the months ahead, including full funding, the dual discipline system, teacher and administrator training, and others. This morning, I would like to address the critical issue of time spent by educators in meeting the federal requirements to document every step of the process, from the initial referral of a student to the final written Individualized Education Plan (IEP), including addenda to change or add to the IEP.

The Education Council Act of 1991 (P.L. 102-62) established the National Education Commission on Time and Learning, an independent advisory body. The legislation directed the Commission to prepare a report on its findings. *Prisoners of Time* was released in April 1994 and offered eight recommendations, including "Give Teachers the Time They Need" and "Invest in Technology." These recommendations state the issue succinctly:

> The real issue is education quality. Teachers need time to develop effective lessons. They need time to assess students in meaningful ways and discuss the results with students individually. They need time to talk to students, and listen to them, and to confer with parents and other family members. They need time to read professional journals, interact with their colleagues, and watch outstanding teachers demonstrate new strategies .... We will never have truly effective schools while teachers' needs are met at the expense of students' learning time.
>
> *Prisoners of Time*, p. 36

> At a minimum, computers and other technological aids promise to rid teachers and administrators of the mundane record keeping that is such a characteristic of school life today, permitting teachers to spend more time designing instructional programs for their students.
>
> *Ibid*, p. 37

Unfortunately, for a special class of teachers, that time has been eroded by paperwork requirements that increasingly take teachers away from the clients they serve: the children whose special needs require more – not less – instructional contact time. One of the most valuable things you could accomplish in legislating changes to IDEA would be to find a way to reduce the administrative burden now carried by our school staff so that more of their valuable time can be spent in direct instruction of children.

While recognizing the unique situation that exists in each state and district, I feel that the experiences of educators at the school I lead, Oak View Elementary, can provide some insights into the impact that the IDEA law and regulations have on the time demands on a school's resources. With a student population of more than 715, with 29% minority representation, in a predominantly upper middle class community, we are currently staffed with five full-time Learning Disabilities teachers, two teachers for children with Emotional Disabilities, a Speech and Language clinician, and four special education instructional assistants. Our student population includes 102 students identified and receiving special education services. To provide more inclusion support for additional children with disabilities to attend their neighborhood school next year, we will be adding one teacher and one instructional assistant. Itinerant teachers also serve students who need physical and/or occupational therapy. Finally, to assist one hard-of-hearing student, a full-time sign language interpreter is assigned to our building. Thus, the total of current full-time special education staff is eight, with six support staff and two part-time itinerant teachers. Our faculty also includes 26 regular classroom teachers (grades K-6), plus specialists in music, art, etc.

This staffing is an example of the commitment my school district, Fairfax County, has made to the 22,000 special education children and parents of our community. School-based teachers and administrators are also blessed with well-trained and responsive central office support for staff development and training for our 2,000 special educators and to support schools in preparation for due process appeals. We have a well-trained cadre of special education teachers who work collaboratively and seamlessly in meeting the needs of students, many of whom receive support from more than one teacher. The more time these teachers have available to work with learning disabled students, the more fragmentation is reduced and the more effectively resources can be focused.

For us, the frustrations in trying to provide services to students as required by their IEPs arise when paperwork requirements compete with the available instructional time. Attached is a chart that describes the time each professional spends on a student who qualifies for services under IDEA, from initial referral to IEP. This 83.5 hours represents the average minimum requirement for each student. Teachers find themselves between a rock and a hard place, if you will, with unyielding demands made on their time. When something gives, the impact is either on the teacher or the student, two of our most valuable resources. The monetary cost associated with the 83.5-hour average is also significant. Based on an average salary of $60,000 for professional staff, the per-student cost of the initial process of identification through the development of the first IEP is nearly $4,000 ($3,911). Multiplied by the 22,000 special education students in Fairfax County, the total average per-student cost of identification through the initial IEP – *before any actual special education services have begun* – is more than $86,000,000. That is for one county.

From my desk at Oak View, I do not have the broad picture of IDEA's impact on public education across the country or how each state or district interprets the paperwork requirements of the law. However, I do believe that the facts of Fairfax County can inform the debate. This morning, I have brought those compulsory documents that are regularly used for the majority of meetings held in Fairfax County to identify needs and prescribe services under IDEA, as well as an actual IEP. In addition, I will submit excerpts from a budget document prepared by the Fairfax County Public Schools that will help define the many levels (and expenses) of special education services provided by my school system.

The immediate impact of reduced paperwork requirements for educators will be increased instructional contact with children. From my vantage point as a principal, I request that you consider the following recommendations:

1. Reduce the number of required times during a school year when the procedural safeguards are distributed and explained. The document we provide to parents in Fairfax County is 16 pages long, and it seems to me that it is not necessary to provide it repeatedly to parents, once they acknowledge having received the document and an explanation of its contents.

2. Provide a list in the reauthorized IDEA of all the documents that are required for identifying and serving each special education student. This would help states to be in compliance and reduce the chances of their requiring unnecessarily duplicative and time-consuming documents.

3. Standardize sections of the IEP to reduce the time spent reviewing and rewriting the document when students change districts or states. This would assist schools in providing services more quickly to students.

4. Provide for the use of technology to automate the written components of the IEP process in order to reduce the time spent on the preparation of paperwork.

5. Allow for the same classroom accommodations to be used for all regular state and county assessments, eliminating the need for additional paperwork or meetings when new assessments are added during the term of the IEP.

6. Consider simplifying the process of amending the IEP during its one-year term and make the amendment process part of the regular communication that exists between teacher and parent

7. When possible, tie the IEP goals to the annual assessments now required under the "Leave No Child Behind" law, eliminating the short-term objectives that impose a heavy time requirement on the teacher to include in the IEP.

8. Consider reducing the time classroom teachers are required to participate in IEP meetings. When classroom coverage for both the special education and general education classroom teachers is needed, resources must be taken from other parts of the instructional program. The principal and special education teacher can describe how the required services will be provided in the general education instructional setting without the required presence of the general education teacher.

9. Consider lengthening the timeframe of the IEP from the current requirement for an annual formal rewrite. The formal process would be retained for a child's major transition points, but the new approach would allow for a more collaborative process for ongoing review of the student's progress.

Mr. Chairman and members of the subcommittee, I thank you for this opportunity to present the principal's viewpoint on this timely and important topic. It would be my pleasure and that of NAESP to provide any additional information you desire. NAESP looks forward to working with you and the other federal legislators on the gamut of issues associated with the reauthorization of the IDEA.

AVERAGE TOTAL TIME (STAFF HOURS) TO COMPLETE PROCESS LEADING TO AND INCLUDING AN IEP

STAFF	REFERRAL		LOCAL SCREENING PROCESS					IEP		TOTALS
	INITIAL	ADMIN PREP	ADMIN PREP	MEETING	TESTING	STAFFING	ELIGIBILITY	PREPARING DOCUMENTS	MEETING	
TEACHER	1.5**	.5		3*	.5	2.5**	2*		2**	12
LOCAL SCREENING CHAIR			.5	2		1	1			4.5
PSYCHOLOGIST			3.5	2	2.5	1	1			10
SOCIAL WORKER			3.5	2	2	1	1			9.5
SPEECH & LANGUAGE TEACHER	1	.5		2	3	1	1	2	1.5	12
READING TEACHER				2	1	1	1			5
COUNSELOR				2	1	1	1			5
LD (OR OTHER SPECIAL EDUCATION) TEACHER			.5		9	1		8	1.5	20
ADMINISTRATOR				2		1	1		1.5	5.5
TOTALS	2.5	1	8	17	19	10.5	9	10	6.5	83.5

* Time to write reports, teacher narratives, collect and copy student information, work samples, etc.

** Time to make lesson plans and consult with substitute for coverage.

WHAT IDEA COSTS US

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Cost Per Pupil & Per Service

Detailed Costs Per Pupil

The cost-per-pupil figures are computed by identifying all school operating fund costs directly associated with an instructional program, such as elementary general education. Transportation costs are distributed to each program according to the actual costs of providing services.

The instructional support program costs are allocated to the appropriate programs on a cost-share basis. Then the indirect costs from the facilities management, general support, and central administration programs are distributed on a cost-share basis. Direct and indirect costs for Adult Education and the Grants and Self-Supporting Fund are excluded. The remaining total is divided by an unduplicated count of the membership enrolled in the program to arrive at an average cost per pupil. The only exceptions are for 6th grade students who attend middle schools and kindergarten-age children who attend Success by Eight schools. Sixth grade students who attend one of the grade 6-8 middle schools are included in the middle school cost per pupil, as are their associated costs. Success by Eight kindergarten-age children are included in the elementary cost per pupil, as are their associated costs. Costs of full-day kindergarten in Project Excel schools are included in the kindergarten cost per pupil.

In addition, FCPS has begun calculating cost-per-service ratios for many of the special programs and services offered in our schools. It is useful to measure the costs of specialized services. Students in FCPS schools receive a multiplicity of services, including gifted and talented, English for speakers of other languages, alternative school, special education Level 1 and Level 2, center-based special education, and high school academies.

For elementary, middle, and high school students, separate costs per pupil are calculated for students receiving ESOL services and students who do not receive ESOL services.

The table below shows average cost-per-pupil data for three years. Separately calculating costs for kindergarten and elementary more clearly shows the relationship between elementary, middle, and high school cost per pupil.

FCPS Average Cost Per Pupil
FY 2003 Proposed

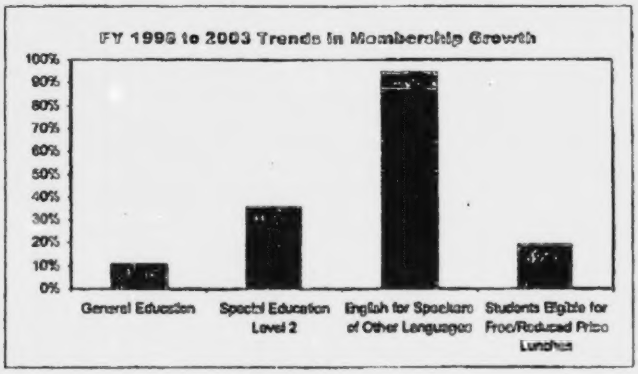
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
General Education					
FECEP	$4,523	$4,615	$5,643	$1,028	22.3%
Kindergarten	$4,474	$4,682	$5,023	$341	7.3%
Elem School Program	$7,129	$7,429	$8,056	$627	8.4%
Middle School Program	$7,778	$7,823	$8,340	$517	6.6%
High School Program	$8,338	$8,720	$9,205	$485	5.6%
Average for General Education	$7,368	$7,645	$8,189	$544	7.1%
Average for Special Education	$12,216	$13,555	$15,130	$1,575	11.6%

Trends

In addition to increased numbers of students, the composition of membership growth has added to the cost. During the past decade, the special education and English for speakers of other languages (ESOL) population have increased at a faster pace than the general education population.

Special Education Membership Trends

Membership in special education Level 2 programs, including preschool programs, has increased each year by an average rate of 6.25 percent since 1998. Special education students require specialized instruction and additional resources. The average cost per pupil for the special education program is $15,130; the general education program cost per pupil is $8,189. In addition, students enrolled in both general and special education classrooms may receive special education Level 1 services, at an average cost per service of $4,407. Since FY 1998, the average growth rate for the provision of Level 1 services is 5.16 percent.



FY 1998 to 2003 Trends in Membership Growth

English for Speakers of Other Languages (ESOL) Membership

The ESOL program is one of the fastest growing programs for students with special needs in the school system. As shown in the chart above, over the past five years ESOL membership has increased faster than special education membership and significantly faster than general education membership. In FY 1998, ESOL services were provided to 10,419 students with 414.9 teachers; 20,259 students will receive ESOL instruction from 684.9 teachers and guidance counselors in FY 2003. This includes ESOL teachers in the alternative high school program and the ESOL transition centers.

The total ESOL budget (including transition centers) has grown from $24.3 million in FY 1998 to $46.5 million in FY 2003. The substantial increase reflects the increase in membership and the cost of employee salaries. The FY 2003 cost of providing ESOL services for each student is $3,008.

Cost Per Pupil & Per Service

Cost Per Service

Cost-per-service calculations show the cost of providing a specific type of educational service to a student. The table below shows the costs per service for the various alternative school programs, ESOL, and for special education for each of its major service delivery modes.

On the following page, the chart provides a more detailed look at the per service cost for special education services.

Cost Per Service Summary

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Alternative Programs					
Intervention and Support Program	$20,435	$17,330	$18,241	$911	5.3%
Alternative High School Programs	$11,264	$13,191	$13,662	$471	3.6%
DSS Alternative Programs	$12,495	$14,641	$14,897	$256	1.7%
English for Speakers of Other Languages					
Elementary (1-6) Program	$1,886	$1,780	$2,169	$389	21.9%
Middle School Program	$3,675	$3,818	$4,639	$821	21.5%
High School Program	$4,060	$4,198	$4,704	$506	12.1%
Special Education	$2,482	$3,732	$3,764	$32	0.9%
Average for ESOL	**$2,523**	**$2,522**	**$3,008**	**$486**	**19.3%**
Special Education					
Preschool	$13,821	$15,750	$16,729	$979	6.2%
Level 1 Services (Resource)	$3,523	$3,884	$4,407	$523	13.5%
Level 2 Services (Self-Contained)	$15,899	$17,506	$18,998	$1,480	8.5%
Average for Special Education	**$8,006**	**$8,742**	**$9,510**	**$768**	**8.8%**

Special Education Services

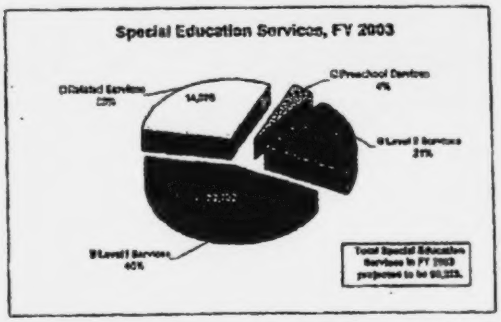
Special Education Per-Service Costs FY 2003 Proposed	[illegible]	Approved	Proposed	[illegible]	[illegible]
Preschool					
Home Resource	$7,103	$8,341	$8,958	$617	7.4%
Classroom-Based	$19,268	$22,219	$23,501	$1,282	5.8%
Average Per-Service Cost, Preschool	$13,821	$15,759	$16,729	$970	6.2%
Level 1 Services (Resource)					
Autism	$5,403	$5,109	$5,276	$167	3.3%
Emotionally Disabled	$6,831	$6,171	$5,789	$618	10.0%
Hearing-Impaired	$16,109	$17,134	$18,140	$1,006	5.9%
Learning Disabled	$4,169	$4,358	$5,015	$657	15.1%
Mild Retardation	$3,763	$3,743	$7,245	$3,502	93.6%
Physically Disabled	$9,368	$10,898	$11,113	$215	2.0%
Speech-Impaired	$1,948	$2,302	$2,657	$355	15.4%
Vision-Impaired	$9,207	$9,765	$10,452	$687	7.0%
Average Per-Service Cost, Level 1	$3,5[illegible]	$3,884	$4,407	$523	13.5%
Level 2 Services (Self-contained)					
Autism	$20,477	$22,564	$24,571	$2,007	8.9%
Emotionally Disabled	$21,816	$25,248	$27,581	$2,333	9.2%
Hearing-Impaired	$19,941	$20,972	$24,490	$3,518	16.8%
Learning Disabled	$12,813	$13,759	$14,631	$872	6.3%
Mild Retardation	$13,772	$16,513	$20,164	$3,651	22.1%
Moderately Retarded/Severely Disabled	$26,448	$30,552	$33,222	$2,670	8.7%
Noncategorical	$16,252	$17,910	$18,114	$204	1.1%
Physically Disabled	$30,338	$36,417	$37,380	$963	2.6%
Average Per-Service Cost, Level 2	$16,850	$17,699	$18,998	$1,499	8.5%
Special Education Average Per-Service Cost	$9,000	$9,742	$9,510	$768	8.0%

Information

Special Education Services

Special Education Services and Membership

In FY 2003 over 50,000 special education services will be provided to over 22,000 students, or an average of 2.3 services per student. The type and mode of special education services are determined by each student's Individual Education Plan (IEP). Staffing for the provision of these services is then based on the type of service (i.e., speech and language), the mode of service (Level 1, Level 2, preschool, or related) and the site. The provision of special education services is mandated by the Individuals with Disabilities Education Act (IDEA); specific regulations governing FCPS' special education program are established by the Commonwealth of Virginia.



Special education services are classified in four different modes. The distribution of services in each mode is shown in the pie chart at the right.

- Level 1 services are those provided to students in primary or secondary disability service areas for less than 50 percent of the school day. These services may be provided to students in a general education classroom setting or in a Level 2 classroom. If a student receives only Level 1 services, he or she is counted for FCPS membership purposes as a general education student.

- Level 2 services are those provided to students in primary or secondary disability areas for more than 50 percent of the school day. These services may be provided in school classrooms and centers. Students receiving Level 2 services are reported, for FCPS membership purposes, as special education students.

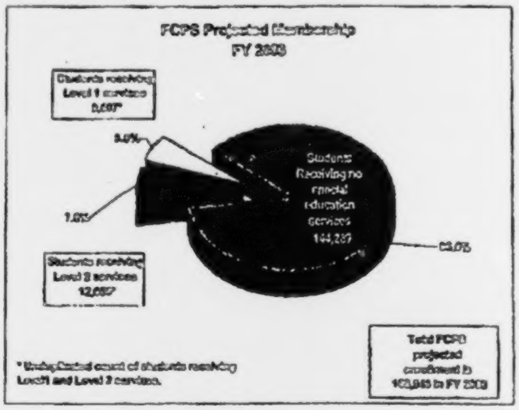
- Preschool services are provided to students under the age of five. Preschool services may be provided either in a classroom setting or in the child's home. Preschool students are reported, for FCPS membership purposes, as special education students.

- Related services may also be provided. These are categorized as therapy services, integrated technology services, adaptive physical education services, and career and transition services. Related services are provided to students already receiving Level 1, Level 2, or preschool special education services.

Students receiving special education services will make up 13.4 percent of the total FCPS membership in FY 2003, as shown in the next chart on the following page. Students receiving Level 1 services make up 5.8 percent of the FY 2003 total, while students receiving Level 2 services make up 7.6 percent of the total membership.

Special Education Services

Special education services are provided in the areas of adaptive physical education, autism, communication disorders, emotional disabilities, hearing impaired, instructional (assistive) technology, learning disabilities, mild retardation, moderate retardation, non-categorical elementary, physical disabilities, preschool, severe disabilities, therapy services, visual impairment, and career and transition services. FCPS will provide a total of 50,228 services to FCPS students in FY 2003.



Each service has specific state-mandated staffing ratios. The Commonwealth of Virginia mandates that *each* special education classroom be staffed according to the ratio for *each* service area. In FCPS, staffing is done at 971 discrete sites for Level 2 services and Level 1.

For example, a school that provides learning disability Level 1 and Level 2, emotional disability Level 1 and Level 2, physical disability, and mild retardation services counts as six sites, since each service area and mode must be staffed at the level mandated by the state. The staffing calculations for a hypothetical elementary school serving students in these six areas is shown in the chart to the right. The chart shows that although the staffing ratios range from 1 teacher for 8.5 students to 1 teacher for 24 students, the average is 1 teacher for each 8.5 students, due to the distribution of students by service area. The state staffing ratios are treated as caps, so if a class is one student over the ratio, an additional teacher must be added. This requirement holds whether the additional student is added in September or May.

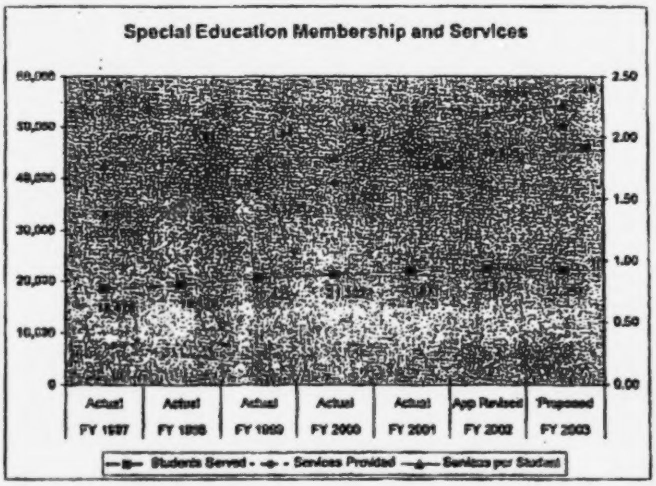
Service Area	Ratio	Students	Teachers
ED Elementary Level 1	1 Teacher : 24 Students	14	1.0
ED Elementary Level 2	1 Teacher : 10 Students	12	2.0
LD Elementary Level 1	1 Teacher : 15 Students	14	1.0
LD Elementary Level 2	1 Teacher : 10 Students	16	2.0
Mild Retardation Level 2	1 Teacher : 10 Students	16	2.0
Physical Disability Level 2	1 Teacher : 8.5 Students	12	2.0
[illegible]	[illegible]	[illegible]	[illegible]

Special Education Services

Because of the difficulty of hiring certified special education teachers after the beginning of the school year, special education staffing projections take into account the growth in services that occurs during the school year. This growth occurs for several reasons:

- Students from outside FCPS move into the area and are found eligible for special education services
- FCPS students, at their annual IEP meeting, are found to need a different combination of services or additional services
- FCPS students, at their annual IEP meeting, move from Level 1 to Level 2 status, or vice versa.

An additional factor influencing special education staffing and costs is the number of services provided to each special education student. The chart below shows the trends in the total number of special education students, the total number of services provided to those students, and the ratio of services per student. Since 1997, the average number of services for each special education student has increased by approximately 28 percent. As the chart illustrates, this trend is expected to continue.



APPENDIX E - WRITTEN STATEMENT OF KATHERINE BEH NEAS, ASSISTANT VICE PRESIDENT, GOVERNMENT-RELATIONS, EASTER SEALS, AND CO-CHAIR, TESTIFYING ON BEHALF OF, CONSORTIUM FOR CITIZENS WITH DISABILITIES EDUCATION TASK FORCE, WASHINGTON, D.C.

CONSORTIUM
for
CITIZENS
with
DISABILITIES

Testimony of Katherine Beh Neas

Consortium for Citizens with Disabilities Education Task Force

Before the Committee on Education and the Workforce

United States House of Representatives

May 2, 2002

1730 K Street NW, Suite 1212, Washington, DC 20006 Phone 202.785.3388 www.c-c-d.org

Mr. Chairman, my name is Katherine Beh Neas and I speak to you today as one of the four co-chairs of the Consortium for Citizens with Disabilities Education Task Force. I also am Assistant Vice President for Government Relations for Easter Seals. The Consortium for Citizens with Disabilities is a coalition of nearly 100 national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. Thank you for this opportunity to testify regarding the Individuals with Disabilities Education Act (IDEA).

I bring you greetings from Clare Huckel, a teacher at the Easter Seals preschool program in Bucks County, Pennsylvania. It is the same school she attended as a preschooler in the 1970s. When Claire was born with cerebral palsy in 1972, children with disabilities were not expected to live active lives. Noticing that Claire's physical development was slow, and that she had trouble moving her left arm and leg, her parents sought the advice of a neurologist when she was just over a year old. They learned that Claire had cerebral palsy and were also told she would probably never feed herself and might best be placed in a home for children with disabilities. The Huckels accepted the diagnosis, but not the prognosis.

When Claire was 3, she began attending Easter Seals preschool in Bucks County where she received physical and occupational therapy and participated in preschool learning activities. According to her father, Claire grew stronger and learned to walk with confidence. At age 6, she was ready to enter first grade and her parents enrolled her in elementary school in 1978, one of the first year's of Public Law 94-142, now known as IDEA. Claire was the only child with a disability in her class.

Claire Huckel was a pioneer, one of few young people with disabilities in her elementary, junior high and high schools. As Claire says, "It wasn't always easy. My mom and I had to work with each school and many teachers to explain my disability and help them adapt to my need for accessibility." Claire graduated with honors from high school and college, earning a teaching degree.

She began her teaching career working with elementary school children. After a few years, she returned to school and earned a master's degree in special education with high honors. Two years ago, when there was an opening at Easter Seals Bucks County, Claire applied and went to work with a new generation of children with disabilities. "It was my dream," she explains, "to help children like I was. And the best part is that my teacher is still there and now is my colleague as well."

IDEA ACCOMPLISHMENTS

IDEA is a good law that has literally transformed the lives of children with disabilities and their families. Over the past 26 years, millions of children with disabilities, like Clare, have received appropriate early intervention, preschool and special education and related services thanks to the enactment and implementation of the Individuals with Disabilities Education Act. The success of IDEA is evidenced by the following accomplishments.

The number of children with developmental disabilities who must live in state institutions away from their families has been dramatically reduced. In 2000, 2,130 children with developmental disabilities were living in state institutions, compared to 70,655 children in 1974, the year before the passage of Public Law 94-142, the Education for All Handicapped Children Act. In 2000, the average state institution expenditure was $113,863 per child. Not only do these figures represent a major accomplishment in family preservation, but they also reflect a significant reduction in the cost to governments and taxpayers.

More young children are entering school ready to learn. Today, almost 800,000 young children with disabilities are participating in IDEA's early intervention and preschool programs where they and their parents receive support to enhance their development.

More students with disabilities participate in state and district-wide assessments. Today, students with disabilities are included in state and district-wide assessments. States report the following positive outcomes when students with disabilities are included in accountability systems: increased access to the general curriculum, more rigorous education, and increased academic expectations.

Effective practices are implemented in schools across the country. IDEA has supported, through its support programs authorized by Part D, more than two decades of research and demonstration in effective practices in educating students with disabilities to enable teachers, related services personnel, and administrators to effectively meet the instruction needs of students with disabilities of all ages. One example of this investment is the work of George Sugai and his colleagues at the University of Oregon in the area of positive behavior supports. There work bridges the gap between research and practice resulting in a reduction in discipline problems throughout schools across the country.

More students with disabilities are completing high school. According to the National Organization on Disability/2000 Harris Survey of Americans with Disabilities, in 1986, 39 percent of people with disabilities failed to complete high school. Today, 22 percent of people with disabilities have not completed high school. Students with disabilities who complete high school are more likely to be employed, earn higher wages, and enroll in post-secondary education and training than students with disabilities who do not complete high school. Moreover, students with disabilities who had graduated from high school were more likely to be employed at three to five years after leaving high school.

More people with disabilities who want to work are working. In 1986, 46 percent of working-age people with disabilities were employed. Today, 56 percent of working-age people are employed.

1997 REFORMS

Congress significantly reformed IDEA in 1997.. For the first time, children with disabilities are required to have access to the general curriculum. The vast majority of students with disabilities are expected to participate in state and district wide assessments. These two new requirements will go a long way to raise expectations for the educational outcomes of students with disabilities. Its important to note that we are ending the second full school year during which the 1997 reforms have been available to be implemented in our nation's schools.

NO CHILD LEFT BEHIND ACT

The No Child Left Behind Act that you just enacted makes many new and necessary reforms to our public education system, of which special education is a part.

The new law requires states to establish a single statewide accountability system. States must define "adequate yearly progress" to include annual statewide measurable objectives for improving achievement by all students, including students with disabilities. These standards apply to children in grades 3 through 8. This provision builds on the changes made in 1997 to IDEA that required students with disabilities to have access to the general curriculum and to be included in state and district-wide assessments. While appearing modest in its policy, this provision has the potential to dramatically increase educational results for students with disabilities because states will have to establish a system of accountability that will measure how they meet the educational needs of all students, including students with disabilities.

According to research by the National Center on Educational Outcomes (NCEO) at the University of Minnesota, before the enactment of the No Child Left Behind Act, most states reported increased participation rates of students with disabilities in state assessments, and in many cases, improvement in performance as well. Participation rates in state assessments still vary, from 33 percent to 97 percent of students with disabilities, but continue to increase.

Performance levels also vary widely, with the differences between rates of students with disabilities meeting state standards and all students ranging from 20 percent to 50 percent. In one state, for example, 23 percent of students with disabilities met the state's proficiency standard, whereas 48 percent of all students in the state met the standard. In another state, 14 percent of students with disabilities met the state's proficiency standard, whereas 63 percent of all students met the standard.

CCD remains hopeful that student education achievement will continue to rise as more schools effectively implement IDEA and the No Child Left Behind Act. We urge the Committee to give states the opportunity to implement these existing requirements.

UNEVEN IMPLEMENTATION

While there are many schools across the country in which children with disabilities are well educated, implementation of IDEA is uneven. Shortages of qualified personnel are critical and persistent; and funding for the three state grant programs and the discretionary grant programs has never been adequate. IDEA, as reformed in the 1997 amendments and when fully implemented and enforced, provides states and local school systems a framework to improve educational outcomes for students with disabilities.

Only when every public school has the necessary resources and employs qualified and well-trained staff who understand and accept their roles and responsibilities, incorporates research-based practices, involves parents as equal partners, welcomes all children and their families and believes children with disabilities can be successful, can we as a nation have confidence that IDEA is being effectively implemented.

RECOMMENDATIONS

Our system of public education is responsible for educating all students, including students with disabilities. Only when special education and general education work together can we be confident that no child will be left behind. To this end, the Committee should build on the policies set forth in the No Child Left Behind Act, and require that all special education teachers and other education personnel are qualified and certified by 2005. Research has demonstrated that the most significant factor of student achievement is the quality of the educational personnel.

In addition, all IDEA programs, the Part C early intervention program, the Section 619 preschool program, Part B, and the discretionary programs of Part D all must be fully funded. All Part B funds must remain in education. Many of our task force members are advocating for indexing Part D programs at 10 percent of Part B funding.

Many of the our task force members also believe that tens of thousands of young children with disabilities who could benefit from Part C's early intervention program are not served. Approximately 190,000 infants and toddlers currently participate in Part C. States with high concentrations of low income families are not serving more children, despite the research that demonstrates that children who are poor are twice as likely to have a significant disability than their middle and upper income peers. Moreover, the Census reports that in 1997, more than 600,000 infants and toddlers have some sort of disability. The Committee must examine strategies to ensure access to early intervention services for all eligible infants and toddler with disabilities and their families.

The CCD Education Task Force understands policymakers are committed to increasing educational outcomes for students with disabilities served by IDEA. We welcome that goal. In reauthorizing IDEA, the Task Force urges policymakers to analyze carefully each issue of concern to determine whether the concern results from a problem with the current statute or a problem of inappropriate, ineffective or incomplete implementation of the current statute. Such an analysis should guide policymakers in determining whether changes are required to enhance implementation of current law or whether requirements of the statute need to be changed. We have provided a set of guiding principles to assist you in your review of IDEA. I'd like to highlight just a few of these principles.

All children should be provided a quality public education that promotes academic success. The tyranny of low expectations has produced limited academic success among too many students, including students with disabilities. Research shows student achievement significantly improves when teachers and other faculty hold high expectations for students. All children, including children with disabilities, must be identified and provided a free, appropriate public education in the least restrictive environment (LRE).

All educational personnel, including administrators, principals, teachers, paraprofessionals and related services personnel, must be qualified to educate students with disabilities. Too often personnel have not received the necessary training in effective methods of educating students with disabilities. With the majority of students with disabilities spending considerable amounts of their school days in general education settings, ensuring general educators have the skills and the commitment to work effectively with students with disabilities is paramount. The presence of qualified personnel is critical to achieving positive student outcomes. High dropout rates among students with disabilities are correlated to shortages of qualified personnel. Ensuring qualified personnel is a critical component of educational accountability.

Shortages of qualified personnel must be decreased and eventually eliminated. The shortage of special education teachers and related services personnel is chronic and persistent. Currently, over 600,000 students with disabilities are taught by special education teachers who are unqualified or under-qualified. IDEA, including Part D, must support recruitment and retention of certified, qualified teachers. Shortages of special education and related services faculty at institutions of higher education must also be addressed, as they curtail the research, leadership and training capacity of the field.

Early intervention and preschool services must be available to all eligible children. Programs authorized by Part C and Section 619 of Part B allow states to create family-centered systems of services across multiple programs and funding streams to ensure infants, toddlers and preschoolers are prepared for school and learning. States must have the resources to effectively screen and identify all eligible children for developmentally appropriate progress to maximize their ability to enter school ready to learn.

IDEA should give increased attention to racial, ethnic and linguistic diversity to prevent inappropriate overrepresentation or under representation of minority children in special education. Some overrepresentation of minorities in special education may be due to the well-documented link between poverty and disability. However, overrepresentation of minority students in some categories of disability significantly exceeds what would be predicted by the impact of poverty. Underrepresentation also occurs in certain categories. Students must be served based on their educational needs. Since 1997, states are required to collect racial data and to intervene where overrepresentation is identified. Further, there is no financial incentive in the law to over-identify students for special education. All students are required to have appropriate access to the general curriculum and to participate in local and state accountability systems.

All levels of government must continue to participate in the implementation of IDEA. The federal government must set the standard for meeting the responsibilities described in IDEA. A strong federal role is essential to ensuring uniform and effective implementation and practice of IDEA.

The civil rights of children with disabilities and their families must be fully maintained. The core substantive rights to a free, appropriate, public education (FAPE) in the least restrictive environment (LRE) are the heart of IDEA. Children with disabilities are entitled to an individualized education that meets their unique needs. An explanation is required if a decision is made by the child's Individualized Education Program (IEP) team to serve the child in a setting that is other than the general education setting.

Procedural safeguards are necessary to assure that educational decisions are determined appropriately. Parents must be fully informed of their children's rights and (can) participate in a meaningful way in all decision making related to their child. IDEA's due process provisions give parents the opportunity to challenge school district decisions. These provisions help level the playing field by correcting the imbalance of the legal and fiscal resources available to school districts and those resources available to families. Quality education demands a collaborative effort among students, parents, schools, and communities.

All schools should establish and implement research-based, effective programs that prevent school violence. Effective research-based programs include classroom management strategies to help reduce classroom disruption and increase student learning; positive behavior intervention programs addressing the emotional, behavioral, and educational needs of students; and professional development to reduce the level of inappropriate disciplinary actions. All school staff must be trained to recognize and respond appropriately to troubled youth.

Thank you for the opportunity to appear before you today.

Committee on Education and the Workforce
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Katherine Beh Neas		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	Yes	No ✓
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: none		
3. Will you be representing an entity other than a government entity?	Yes ✓	No
4. Other than yourself, please list what entity or entities you will be representing: The Consortium for Citizens with Disabilities Education Task Force		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: I am the co-chair of the Education Task Force		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: none		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: Easter Seals	Yes ✓	No

Signature: Katherine Beh Neas Date: 5-1-02

Please attach this sheet to your written testimony.

APPENDIX F - WRITTEN STATEMENT OF LESLIE SEID MARGOLIS, PARENT, AND ATTORNEY, MARYLAND DISABILITY LAW CENTER (MDLC), BALTIMORE, MD

Statement of Leslie Seid Margolis

Testimony Before the Subcommittee on Education Reform,
House Committee on Education and the Workforce

May 2, 2002

Good morning Mr. Chairman and Members of the Subcommittee. My name is Leslie Seid Margolis, and I am the parent of a nearly eight year old child with lissencephaly, a rare genetic brain development disorder that results in significant physical and cognitive disabilities. Despite the severity of her disabilities, my daughter Pazya currently is fully included in a regular first grade class in a Baltimore City public school. I appreciate the opportunity to testify today regarding the Individuals with Disabilities Education Act (IDEA); my perspective is based not only on my experiences as a parent of a child who benefits tremendously from the IDEA, but also on my professional status as a managing attorney at the Maryland Disability Law Center (MDLC), Maryland's protection and advocacy agency. I have worked at MDLC since 1985 and, in that time, have represented numerous children in individual special education cases and in class action litigation. I have also spent a great deal of time working on policy issues at the local, state, and federal levels. I chair a statewide special education policy coalition comprised of approximately 25 members, am a board member of the Council of Parent Attorneys and Advocates, and I created and continue to chair a national advocacy workgroup devoted to the issue of IDEA monitoring and enforcement.

As a parent, and as someone who has spent a good deal of time thinking about the IDEA professionally, I want to make several points today. First, the IDEA is an essential law. It is not a statute that needs to be dismantled or amended beyond recognition. It is, rather, a statute that needs to be fully implemented. Second, effective implementation of the IDEA depends on meaningful monitoring and enforcement by the Office of Special Education Programs (OSEP), by states, and by local school systems. Let me expand on these two points.

My interest in special education at the federal level was sparked by a 1989 monitoring report issued by OSEP to Maryland that was one-and-one-half pages long and declined to find any violations. Over the course of inquiries and, later, litigation under the Freedom of Information Act, we learned that OSEP had prepared a report making many findings, but that Maryland objected to the report and the two agencies had essentially negotiated away the report. Our experience in Maryland became a rallying cry for change in the monitoring process, and a monitoring oversight committee was set up by OSEP in the early 1990s. I was a member of this committee and approximately 10 years ago, I was asked to speak at one of the meetings. I stated that monitoring is meaningless without enforcement. Since that time, OSEP has changed its monitoring system numerous times, but that statement is just as relevant as it was 10 years ago, and so I repeat it: Monitoring is meaningless without enforcement.

Twenty five years after enactment of the IDEA, we still struggle to ensure that the IDEA is implemented at all, let alone implemented effectively, for students in every school district in the country. In attempting to answer the question of why this is the case, many people erroneously conclude that this is because there is a problem with the IDEA itself. In fact, however, this is not so, for at least three reasons. First, many of the problems attributed to the statute such as too much paperwork and too many meetings are actually the result of poor policy and practice at the state and local levels. There is, for example, nothing in the IDEA that requires Baltimore City to rewrite an entire IEP every time a change, however small, is made to a student's program. Second, the fact that many schools throughout the country successfully provide good special education services to students with disabilities refutes the notion that somehow the statute is too complicated to be implemented. Many school systems are able to implement the statute effectively without complaint. Third, much of the lack of implementation of the IDEA is attributable to inadequate monitoring and enforcement at the state level and to a federal monitoring system that sweeps too broadly, focuses too much on procedures and too little on substance, fails to produce timely monitoring reports, and engages in enforcement action only rarely and inconsistently.

The problems with federal monitoring have been persistent enough and pervasive enough that several years ago, a number of advocates from protection and advocacy organizations and national disability and education advocacy groups joined together to determine a course of action that would result in meaningful change. Ultimately, this workgroup became part of a larger group that includes OSEP staff and state special education directors, as well as early intervention personnel. This larger group developed a focused monitoring and enforcement framework that, if implemented, could effect significant change. A copy of our current draft proposal is attached to my testimony.

As we have conceptualized focused monitoring, a broad group of people would identify a few significant priorities—those aspects of the IDEA that if implemented would truly make a difference for students with disabilities, and those priorities would then be monitored using a data-based and verifiable system, with provision of supports and capacity-building and, when necessary, utilization of sanctions in accord with a protocol for making decisions about the level of OSEP intervention. In our view, the quid pro quo for a narrower, sharper focus on a small number of priorities is meaningful enforcement that results in implementation of those priorities. I say "implementation" of those priorities rather than "compliance" because I think "compliance" has erroneously been defined too narrowly as simply adherence to procedural requirements. In fact, compliance is equivalent to implementation of the substantive and procedural requirements of the IDEA, and the negative connotation associated with the word must be dispelled.

I have been pleasantly surprised by how far we have come since we first approached the Office of Special Education and Rehabilitative Services in early 2000 about exploring the feasibility of our proposal. OSEP staff have participated meaningfully in our meetings and have provided us with information that has helped us craft a proposed monitoring and enforcement system that we think will truly make a difference for students with disabilities if it is implemented. However, I must say that now that we have reached the point at which our system can be implemented, at least on a small scale, I am concerned that OSEP may lack the ability or the will to make the system real. At heart, I and others are concerned that focus on a small number of priorities will be embraced readily by OSEP, but that the other essential piece of focused monitoring, that is, enforcement, will not be so easily adopted and exercised. I am somewhat encouraged by the firm position OSEP took with my own state at our last steering committee meeting about the need to do business differently and to consider enforcement actions against local school systems, but the gap between talking about enforcement and actually engaging in it sometimes seems like an unbridgeable chasm.

I understand that OSEP must function in a world that is full of political pressure and fraught with the tension that comes with the need to have a cooperative relationship with the very agencies for which OSEP is charged with oversight responsibilities. However, to preserve any level of credibility with advocates and parents, and much more importantly, to enable the promise of the IDEA to be fulfilled by true implementation of its requirements, OSEP must put the last piece of the monitoring system in place and use its enforcement authority. The answer to lack of implementation of the IDEA is not dismemberment of the IDEA; it is, rather, enforcement.

It is unconscionable to acknowledge, as OSERS' previous assistant secretary did, that parents have been the primary enforcers of the IDEA and then fail to act to change that situation. Parents rightfully have, and must retain, the ability to participate in the decisions that affect their children's education and to challenge those decisions when they wish to do so, but parents should not be responsible for the enforcement role that rightfully belongs to the Department of Education, to states, and to local school systems.

I know that several options are being considered to address IDEA enforcement issues such as transferring enforcement responsibility to the Department of Justice (DOJ) or to the Office of Civil Rights (OCR); I do not believe that either of these options would effectively ensure implementation of the IDEA. The IDEA currently permits OSEP to refer enforcement issues to DOJ, but my understanding is that no such referrals have been made. Without any kind of track record for enforcing the IDEA and indeed without particular expertise in special education issues, DOJ should not suddenly be designated as the primary enforcer of the IDEA. I am likewise opposed to a transfer of enforcement responsibility to OCR as it has not done an effective job of enforcing Section 504 in the context of special education. As an example, I would offer the fact that my state has entered into an extension of a voluntary compliance agreement with OCR regarding the disproportionate identification of minority students as disabled and the disproportionate placement of these students into segregated special education programs. Despite the compliance agreement, Maryland has made little or no progress toward resolving the problem, and OCR does not appear to be taking any action.

What is needed, I think, is a clear directive from Congress to the Department of Education that the Department of Education use the enforcement authority it already has. Perhaps this would happen if the same staff at OSEP did not have both technical assistance and enforcement responsibilities. Or perhaps consideration should be given to an office of the inspector general for IDEA enforcement purposes. I do believe, however, that if OSEP adopted a true focused monitoring system, enforcement responsibility would be easier to exercise because the parameters for OSEP intervention would be clearly defined and because all decisions would be made based on verifiable data.

My daughter is one of the children for whom the IDEA was enacted. I have no doubt that if she had been born 25 years earlier, the doors to the schoolhouse would have been slammed firmly in her face and she would have been forced to stay at home. Instead, thanks to the IDEA, she has had the opportunity to attend preschool, kindergarten and first grade with children who do not have disabilities, children who have exhibited gentleness and enthusiasm with her, children who consider themselves her friend. She, in turn, has had the benefit of specialized services in a stimulating environment with children who make her happy. I devoted my professional life to the IDEA for many years before I became a parent; my commitment to ensuring the fulfillment of the promise of the IDEA has only increased since I became a parent.

The IDEA does work and can, if effectively monitored and enforced, work even better for students throughout the country. I urge the members of this Committee to promote effective monitoring and enforcement of the IDEA rather than promoting changes to the IDEA itself.

Thank you again for the opportunity to testify. I wold be happy to answer any questions you may have at the conclusion of our panel.

Draft—1-29-02

NOTE (4/02): THIS DRAFT IS ABOUT TO UNDERGO MORE REVISION TO INCLUDE A SANCTIONS PROTOCOL AND MORE PART C INFORMATION

FOCUSED MONITORING: A MODEL FOR THE PRESENT

INTRODUCTION

Monitoring and enforcement of the Individuals with Disabilities Act (IDEA) has always been a topic of great controversy among advocates, school district and state administrators, and federal officials. Although a number of monitoring models have been implemented over the years, there has never been an effort to implement a focused monitoring system in which data collection and a small number of carefully-chosen priorities drive the process and intervention and enforcement occur according to predetermined criteria. The model described herein sets forth a focused monitoring model to be utilized by the Office of Special Education Programs (OSEP) but it is certainly replicable by states. The model has been developed by a broad group of stakeholders convened by OSEP; the group includes state special education directors, Part C (Infants and Toddlers) state directors, representatives of the National Council on Disability, representatives of the federally-funded Parent Training and Information Centers, representatives of the protection and advocacy system and national disability advocacy organizations, and OSEP staff. This model represents a level of consensus never before attained regarding the need to focus on a small number of outcome-oriented priorities and to have clearly defined accountability actions, including sanctions, for failure to meet objective, data-supported standards.

ELEMENTS OF A FOCUSED MONITORING SYSTEM

1. A limited number of priorities
2. A limited number of indicators within each priority area
   Priority: goal statement
   Indicator: objective measure of the goal
   Benchmark: level of performance expected
   Trigger: level at which OSEP intervenes
3. A data and information-based, verifiable system
4. Data-based information is used to allocate OSEP's resources in direction of most need
5. OSEP provides supports, including effective building of infrastructure in poorly-functioning states, without defeating the monitoring/enforcement process, and imposes sanctions upon states in order to achieve corrective actions within a specific time frame.
6. Standard, uniform benchmarks are used for inquiry when making monitoring decisions.
7. There is a relationship between monitoring and corrective actions—solutions are linked to identified problems.

8. OSEP ensures that states have an effective state complaint management process.
9. OSEP publishes an annual ranking of states, based on priority areas and indicators
10. OSEP monitoring includes attention to vulnerable populations, regardless of any other monitoring decisions made.
11. Clear, known triggers for interventions and sanctions
12. Families have the opportunity to provide information to OSEP on a continuous basis

PRINCIPLES AND ASSUMPTIONS OF A FOCUSED MONITORING SYSTEM

1. Limited resources are allocated to the areas of greatest need, which are determined by identifying what is most likely to lead to improvements in student performance.
2. Resources are not allocated unless they are sufficient to guarantee the desired outcome.
3. Available information is used to select priorities that will improve student educational performance, increase independence for children with disabilities, and lead to full participation in society.
4. Monitoring strategy is systemic.
5. Monitoring strategy encourages/compels state education agencies to monitor local school systems in the priority areas at a minimum.
6. Corrective actions ensure a change in behavior that results in improved student performance.
7. Monitoring staff are well trained and engage continuous professional development.
8. There is participatory oversight of the monitoring/enforcement system, including independent third party evaluation of OSEP's monitoring of the IDEA and of the Government Performance and Results Act (GPRA) report collection.

PRIORITIES AND INDICATORS: INTRODUCTION

Priorities are the key elements of the IDEA, defined as those items that, if fully implemented, would make a significant difference for infants and toddlers, children, and youth with disabilities. These priorities have been selected by a broad group of stakeholders after significant public input. While not intended to minimize the importance of other elements of the IDEA, it is the consensus of the stakeholder group that if these priorities are implemented, outcomes for infants and toddlers, children, and youth with disabilities will improve and implementation of the other requirements of the IDEA will naturally follow.

Indicators are the measures of whether a priority has been implemented. While every effort has been made by the stakeholder group to identify objective data-based indicators, there are some indicators that will necessarily be measurable only by sampling or by collection of qualitative rather than quantitative data. Further, it must be recognized that, at present, not every listed indicator has a readily available data source. The indicators are listed however, to spur the development of data sources because the stakeholder group considers the indicator to be of great importance in determining whether or not the priority has been implemented.

The following priorities have been identified for Part B:

1) Effective State Supervision
   a) Child Find
   b) Dispute resolution and monitoring
   c) Public Input
2) Meaningful and Effective Family Involvement
3) Development and Performance of Outcomes for Children, and Youth with Disabilities
4) Inclusion of Children, and Youth with Disabilities in Typical Community and School Settings with their Nondisabled Peers with Needed Supports
5) Effective Transitions:
   a) for Children and Youth with Disabilities to Preschool
   b) for Children and Youth with Disabilities to Adult Life
6) Enhanced Social, Emotional and Academic Development for Children and Youth with Disabilities through the use of positive behavior supports and strategies and improved school climate.

The following priorities have been identified for Part C:

1) Effective State Supervision
   a) All eligible infants and toddlers are appropriately identified
   b) Dispute resolution and monitoring
   c) Public input
2) Meaningful and Effective Family Involvement
3) Development and Performance of Outcomes for Infants and Toddlers with Disabilities
4) Embedding Early Intervention Services in Family's Daily Routines and Normally Occurring Community Activities
5) Effective Transitions for Infants and Toddlers with Disabilities—Transition to Preschool

PRIORITIES AND INDICATORS: PART B

PRIORITY 1: EFFECTIVE STATE SUPERVISION—CHILD FIND

INDICATORS:

1) Average age of initial identification by disability

   Comments: This indicator is measurable. The data currently are not collected. This is a critical indicator.

2) Percentage of over- or under-representation overall, and in eligibility categories of mental retardation, specific learning disability, or emotional disturbance, by race/ethnicity, gender, and language

Comments: This indicator is measurable. The data currently are collected, except for gender and language. Need more information to determine if collection of gender and/or language data would be burdensome in order to determine if disaggregation by those factors should be included. As a whole, this is a critical indicator.

PRIORITY 1: EFFECTIVE STATE SUPERVISION—DISPUTE RESOLUTION AND MONITORING

INDICATORS:

1) Complaints (mediations, complaint investigations, due process hearings) as a proportion of eligible population (overall and disaggregated by LEA and by issue).

   Comments: This indicator is measurable. Some of these data currently are required to be provided to the state special education advisory committee; other data may not be collected. This is a critical indicator.

2) Percentage of due process hearings, mediations, and complaint investigations completed within timelines

   Comments: This indicator is measurable. The data may not currently be collected. This is a critical indicator.

3) Percentage of corrective actions implemented within timelines and verified as completed.

   Comments: This indicator is measurable. The data currently are not collected. This is a critical indicator.

4) Reduction over time in the number of repeated violations or citations per issue

   Comments: This indicator was initially deemed to be unmeasurable. However, it is measurable by looking at the number of complaints, hearing decisions, mediations, and monitoring report findings per issue. The data currently are not collected. This is a critical indicator.

PRIORITY 1: EFFECTIVE STATE SUPERVISION—PUBLIC INPUT

INDICATORS:

1) How does the state publicly disclose federal and state monitoring reports and the issues raised through due process hearings, mediations, and requests for complaint investigation? Describe.

Comments: This indicator was initially deemed to be unmeasurable. However, it is measurable by looking at factors such as timeline for disclosure, whether the state posts the information on the Web, makes it available upon request, makes it available by automatic dissemination to local and state advocacy organizations, parent information and training centers, special education advisory committees, protection and advocacy agencies, principals of schools to send home with students, etc. This data currently are not collected, but could be through use of a check-off form that could be designed. This is a critical indicator.

2) How does the state obtain and use public input to evaluate local school system results for students with disabilities?

Comments: This indicator was initially deemed to be unmeasurable. However, it is measurable by looking at how frequently public input is analyzed, (e.g. annually, biannually), the percentage of school sites within each local school system from which input was obtained, and the method of obtaining public input (e.g. public meeting, survey, focus group, other written form). The data currently are not collected but could be through use of a check-off form that could be designed. This is a critical indicator.

3) What steps does the state take to ensure dissemination of parental rights, including the right to file a complaint, and how does the state ensure that these rights are understandable?

Comments: This indicator was initially deemed to be unmeasurable. However, it is measurable by looking at number of complaints, due process hearing requests, and mediation requests per local school system and per issue, as measured against state monitoring reports (look at the percent of correspondence between complaints, etc. and monitoring report citations). This data currently are not collected, although some data may be included in local education agency application. This is a critical indicator.

PRIORITY 2: MEANINGFUL AND EFFECTIVE FAMILY INVOLVEMENT

INDICATORS:

1) Percentage of parents of eligible children and youth with disabilities (who are not employees of the early intervention system, an LEA, an SEA, or any other state agency) that participate in each policy activity conducted by thestate or local school system (such as State Special Education Advisory Council, State Self-Assessment Steering Committee, etc.) disaggregated by race/ ethnicity, language, income, and geographic distribution, and disability and age of child.

Comments: This indicator is measurable if policy activities are defined. The data currently are not collected. It is not clear if this is a critical indicator.

2) Percentage of funds expended to support parent involvement, training, and participation in individual and systemic issues relating to special education

   Comments: This indicator is measurable. The data currently are not collected. This is a critical indicator.

3) How does the state assess parent involvement, and satisfaction with the early intervention and/or special education services for their child and family? Describe. What are the state's findings?

   Comments: This indicator was originally deemed to be unmeasurable. However, involvement is measurable by looking at participation in training, policy activities, use of the complaint, mediation and hearing processes, participation in IEP meetings, etc. Satisfaction is measurable by use of surveys, meetings, focus groups, other written forms, and by analysis of complaints, mediations, and due process hearings. The data currently are not collected. This is a critical indicator.

4) Percentage of parents of eligible children and youth with disabilities who participate contemporaneously (e.g. by attendance in-person or by telephone) in their child's IEP meetings

   This indicator is measurable. The data currently are not collected. This is a critical indicator.

PRIORITY 3: DEVELOPMENT AND PERFORMANCE OF OUTCOMES FOR CHILDREN AND YOUTH WITH DISABILITIES

INDICATORS:

1) Percentage of students with disabilities participating in statewide assessments (regular assessments versus alternate assessments), overall, and disaggregated by race/ethnicity, disability, language, grade, vulnerable population status, local education agency and setting.

   Comments: This indicator is measurable. The data currently are collected but not disaggregated. Consideration should be given to collecting data to measure static performance and progress over time. This indicator is critical, but may need to be modified in light of data collection issues.

   Note: "Vulnerable population status" needs to be defined.

   Note: "Setting" refers to the percentage of time in general education.

2) Percentage of students performing at or above a specific percentage or benchmark, as compared with students without disabilities, disaggregated by race/ethnicity,

language, grade, disability, vulnerable population status, local education agency, and setting.

Comments: This indicator is measurable. The data currently are collected using the state benchmark. Consideration should be given to collecting data to measure static performance and progress over time. This indicator is critical, but may need to be modified in light of data collection issues.

Note: See notes above.

Note: These indicators are proxies for measuring participation in the general curriculum, which is currently not measurable otherwise.

3) Percentage of students with disabilities receiving a regular high school diploma, compared with other states and compared with general education students within the state (data disaggregated by race/ethnicity, language, grade, disability, local education agency, vulnerable population status, and setting)

Comments: This indicator is measurable. The data currently are collected for at least some of the categories. Data should be reported by organizing states into cohorts in which graduation requirements are similar. Consideration should be given to collecting data to measure static performance and progress over time. Should local education agency category be included? This indicator is critical but may need to be modified in light of data collection issues.

Note: See notes above.

4) Percentage of students with disabilities dropping out of school, compared with other states and compared with general education students within the state (data disaggregated by race/ethnicity, language, age, disability, local education agency, vulnerable population status, and setting)

Comments: This indicator is measurable. The data currently are collected and disaggregated by race/ethnicity, but not for other categories. Consideration should be given to collecting data to measure static performance and progress over time. Should local education agency category be included? This indicator is critical but may need to be modified in light of data collection issues.

Note: See notes above.

PRIORITY 4: INCLUSION OF CHILDREN AND YOUTH WITH DISABILITIES IN TYPICAL COMMUNITY AND SCHOOL SETTINGS WITH THEIR NONDISABLED PEERS WITH NEEDED SUPPORTS

INDICATORS:

1) Percentage of students with disabilities educated in a regular classroom for 80% or more of the school day, overall and disaggregated by race/ethnicity, gender, language, disability, and vulnerable population status (for both preschool and school-age children)

> *Comments: This indicator is measurable. Data currently are collected, but not for all categories. This is a critical indicator.*

2) Percentage of students with disabilities educated outside of the regular classroom for 60% or more of the school day, overall and disaggregated by race/ethnicity, gender, language, disability, and vulnerable population status (for both preschool and school-age children)

> *Comments: This indicator is measurable. The data currently are collected, but not for the categories of gender, language, or vulnerable population status. This is a critical indicator.*

3) Percentage of students with disabilities educated in separate school buildings, overall and disaggregated by race, ethnicity, gender, language, disability, and vulnerable population status (for both preschool and school-age children)

> *Comments: This indicator is measurable. The data currently are collected, but not for the categories of gender, language, or vulnerable population status. This is a critical indicator.*

4) How does the State ensure that necessary supports and services are provided for students with disabilities?

> *Comments: This indicator was originally deemed to be unmeasurable. However, it is measurable by looking at students in general education for 80% or more of the school day with respect to participation and performance of students on statewide assessments, percentage of suspensions and expulsions, percentage of IEPs with behavior plans, and percentage of IEPs with assistive technology devices and/or services. The data currently are not collected. This is a critical indicator.*

PRIORITY 5: EFFECTIVE TRANSITIONS FOR CHILDREN AND YOUTH WITH DISABILITIES—TRANSITION TO PRESCHOOL

INDICATOR:

1) Percentage of children exiting Part C who are eligible for Part B who have a completed IFSP or IEP and who are receiving services by age 3

> *Comments: This indicator is measurable. The data currently are not collected. This is a critical indicator.*

PRIORITY 5: EFFECTIVE TRANSITIONS FOR CHILDREN AND YOUTH WITH DISABILITIES—TRANSITION TO ADULT LIFE

INDICATOR:

1) Percentage of students with disabilities who are competitively employed, in post-secondary education, in the military, or incarcerated one year after exiting public school, disaggregated by race/ethnicity, age at exit, gender, and disability

Comments: This indicator is measurable. Much of this data may not currently be collected. This indicator is critical, but education agencies alone cannot collect all of the data. Vocational rehabilitation agencies and other agencies and organizations will need to play a role. Interagency agreements will be essential.

PRIORITY 6: ENHANCED SOCIAL-EMOTIONAL AND ACADEMIC DEVELOPMENT OF CHILDREN AND YOUTH WITH DISABILITIES THROUGH THE USE OF POSITIVE BEHAVIOR SUPPORTS AND STRATEGIES AND IMPROVED SCHOOL CLIMATE

INDICATORS:

1) Percentage of children and youth with disabilities receiving direct counseling, psychological services, or social work services as part of their IEPs, across all disability categories and particularly within the categories of emotional disturbance, learning disability, and mental retardation

Comments: This indicator is measurable. The data currently are not currently collected. This is a critical indicator.

2) Percentage of children and youth with disabilities suspended and/or expelled, overall and disaggregated by race, ethnicity, gender, disability and language

Comments: This indicator is measurable. The data currently are collected, but not for the categories of gender or language. This is a critical indicator.

3) Percentage of children and youth with disabilities placed in interim alternative educational settings, overall and disaggregated by race, ethnicity, gender, disability, and language, broken down by reason for placement in interim alternative educational setting (drugs, weapons, violence/significant threat of substantial risk of harm)

Comments: This indicator is measurable. The data currently are collected but not disaggregated. This indicator is critical but may need to be modified in light of data collection issues.

4) How does the state ensure that comprehensive and effective functional behavior assessments are performed?

Comments: This indicator was originally deemed to be unmeasurable. However, it is measurable by looking at the percentage of IEPs with behavior intervention plans and at suspension/expulsion rates. The data currently are not collected. This is a critical indicator.

PRIORITIES AND INDICATORS: PART C

PRIORITY 1: EFFECTIVE STATE SUPERVISION—ALL ELIGIBLE INFANTS AND TODDLERS ARE APPROPRIATELY IDENTIFIED

INDICATORS:

1) Percentage of children identified as eligible in the age categories birth to one year of age, one to two years of age, and two to three years of age, compared to the general population of the same age.

Comments: The indicator is measurable. The data currently are not consistently collected and/or aggregated by states. This is a critical indicator.

Data sources: Data should exist within child records. Some state data systems may collect and aggregate this data.

2) Percentage of over- or under-representation of total eligible population served (percentage eligible compared to overall population of infants and toddlers) disaggregated by race, ethnicity, and language status.

Comments: The indicator is measurable. The data currently are collected, except for gender and language. Need more information to determine if collection of language data would be burdensome in order to determine if disaggregation of this factor should be included. As a whole, this is a critical indicator.

Data source: Data exist but are not currently analyzed to obtain comparison data.

3) Percentage of eligible children served compared to the state birth-to-three population in the age categories of birth to one year of age, one to two years of age, and two to three years of age, compared to the general population of the same age.

Comments: The indicator is measurable. The data currently are collected. This is a critical indicator. Need to determine how the birth-to-three population will be identified. Benchmarking may need to stratify states based on eligibility definition. Need to account for state anomalies such as Virginia, which does not *count children after 2.6 years of age. Trend data should be reviewed for possible consideration as an indicator.*

Data source: Data available through December 1 Federal reporting.

PRIORITY 1: EFFECTIVE STATE SUPERVISION—DISPUTE RESOLUTION AND MONITORING

Note: Dispute resolution activities of complaint investigations, mediation, and hearings are minimal in Part C, and may not provide a large enough sample to be effective for comparison across states.

INDICATORS:

1) The percentage of issues identified through monitoring and other state oversight mechanisms, including logging and resolving informal complaints that are corrected within timelines and verified as completed.

   Comments: The indicator is measurable. Data may not currently be collected.

   Data source: State monitoring and procedural safeguards records.

2) The state has a system to publicly disclose monitoring reports and the issues raised through due process hearings, mediations, and requests for complaint investigation.

   Comments: This indicator requires a yes/no response that may not be measurable for comparison of performance across states. The data currently are not collected.

   Data source: As reported by Part C Lead Agency.

PRIORITY 1: EFFECTIVE STATE SUPERVISION—PUBLIC INPUT

Note: Suggest moving dissemination indicators from Part B to other related priority areas (i.e. monitoring).

INDICATORS:

1) Percentage of attendance at SICC meetings over twelve month period.

   Comments: The indicator is measurable. The data currently are not consistently collected and/or aggregated by states.

   Data source: SICC records.

2) The state oversight process (monitoring, system evaluation, quality assurance) includes opportunities for public input.

Comments: This indicator requires a yes/no response that may not be measurable for comparison of performance across states. The data currently are not collected.

Data source: Lead agency reports.

PRIORITY 2: MEANINGFUL AND EFFECTIVE FAMILY INVOLVEMENT

INDICATORS:

1) Percentage of parents of eligible infants and toddlers with disabilities participating in professional development activities.

    Comments: This indicator is measurable but may be burdensome. The data may not be consistently collected or aggregated by states.

    Data source: Training records.

2) Percentage of parents of eligible infants and toddlers with disabilities (who are not employees of the early intervention system) who participate in policy activities such as the State Interagency Coordinating Council, Local Interagency Coordinating Councils, etc., disaggregated by race, ethnicity, language, and geographic distribution.

    Comments: This indicator is measurable but may be burdensome. The percentage obtained may be infinitesimal. The data may not be consistently collected or aggregated by states.

    Data source: Lead agency report.

3) Percentage of Federal Part C funds expended to support parent involvement, training, and participation in individual and systemic issues relating to early intervention.

    Comments: The indicator is measurable. The data currently are not collected.

    Data source: Lead agency report. Suggest requiring in Annual Performance Report.

4) Percentage of families surveyed reporting increased knowledge and involvement as a result of early intervention, disaggregated by race, ethnicity, language, and geographic distribution.

    Comments: The indicator is measurable. The data currently are not collected. A uniform family survey is recommended.

    Data source: Family survey to be developed.

5) Percentage of children's records that document family assessment (concerns, priorities, resources) was either conducted or declined.

Comments: The indicator is measurable. The data may be collected through monitoring record review.

Data source: Child's record and monitoring reports.

PRIORITY 3: DEVELOPMENT AND PERFORMANCE OF OUTCOMES FOR INFANTS AND TODDLERS WITH DISABILITIES

INDICATORS:

1) Percentage of children's records that document that evaluation/assessment was conducted in all five domains.

Comments: The indicator is measurable. The data may be collected through monitoring record review.

Data source: Child's record and monitoring reports.

2) Percentage of IFSPs that document that family services and supports meet identified family needs.

Comments: The indicator is measurable. The data may be collected through monitoring record review.

Data source: Child's record and monitoring reports.

3) Percentage of infants and toddlers who complete IFSPs and leave early intervention before age three.

Comments: The indicator is measurable. The data currently are collected. Need to review if a comparison against total number of children exiting provides relevant information.

Data source: December 1 Federal Report.

4) Percentage of families surveyed who report that progress was made toward outcomes on the IFSP.

Comments: The indicator is measurable. The data currently are not collected. A uniform family survey is recommended.

Data source: Family survey to be developed.

5) The state collects data that measures developmental growth of children.

Comments: The indicator requires a yes/no response. Data currently are not collected.

Data source: Child's records.

6) The state collects data that measure families' increased abilities to enhance their children's development.

Comments: The indicator requires a yes/no response. Data currently are not collected.

Data source: Family survey/child's record.

PRIORITY 4: EMBEDDING EARLY INTERVENTION SERVICES IN FAMILY'S DAILY ROUTINES AND NORMALLY OCCURRING COMMUNITY ACTIVITIES

INDICATORS:

1) Percentage of infants and toddlers provided services in segregated settings and disaggregated by race, ethnicity, and language.

Comments: The data currently are not collected in this manner. Data currently are collected by primary setting only, limiting accurate reporting for this indicator. Data currently are disaggregated by race/ethnicity and age. Recommend that the Federal December 1 data reporting be changed to collect data by service and multiple settings.

Data source: Child's record and December 1 Federal reporting.

2) Percentage of infants and toddlers provided services in child care and other typical community settings other than the child's home, overall and disaggregated by race, ethnicity, language, and age (broken down by birth to one year, one to two years of age, and two to three years of age).

Comments: The data currently are not collected in this manner. Data currently are collected by primary setting only, limiting accurate reporting for this indicator. Data currently are disaggregated by race/ethnicity and age.

3) Percentage of families surveyed who report that services are embedded into family routines, disaggregated by race, ethnicity, and language.

Comments: The indicator is measurable. The data currently are not collected. A uniform family survey is recommended.

Data source: Family survey to be developed.

PRIORITY 5: EFFECTIVE TRANSITIONS FOR INFANTS AND TODDLERS WITH DISABILITIES—TRANSITION TO PRESCHOOL

INDICATORS:

1) Percentage of children exiting Part C who are eligible for Part B who have a completed IFSP or IEP (Part C and Part B data) and are receiving services by age three (Part B data)

   Comments: The indicator is measurable. The data currently are not collected by Part C. Data need to take into account states that allow Part C to provide FAPE after third birthday.

   Data source: Part C and Part B child records. December 1 Federal reporting.

2) Percentage of children exiting Part C who are not eligible for Part B and who have been referred to other appropriate services prior to exit date.

   Comments: The indicator is measurable. The data currently are collected.

   Data source: Part C and Part B child records. December 1 Federal reporting.

BENCHMARKS, CLASSIFICATION OF STATES, AND TRIGGERS

Based on the data collected by OSEP, benchmarks are set to determine the level of expected state performance with respect to the indicators. These benchmarks are goals (e.g. "90% of children and youth with disabilities will be educated in the general education classroom"). Benchmarks may change over time and must be reexamined on a regular basis. As more states meet the benchmark, the benchmark will need to be raised.

Outstanding issues/questions related to benchmarks:

Benchmarks need to be set. The challenge for Part C will be extremes in the spectrum of eligibility for states. It will be difficult to create benchmarks and triggers in relation to the indicators that do not have currently available data. Data may be qualitative as well as quantitative. Some indicators may not be measurable, so how do we assess performance on those indicators?

Based on their deviation from the identified benchmark, states will be classified as:

Category 1: meeting or exceeding benchmark
Category 2: below benchmark but should be able to meet benchmark relatively quickly
Category 3: below benchmark; needs more intensive intervention to reach benchmark

Category 4: unacceptable

Triggers will be set to identify both the point at which OSEP will intervene and the extent of intervention. Triggers will be based on the amount of deviation from the benchmark.

States falling into categories 2 and 3 will be expected to develop performance plans to achieve the benchmark. Failure to make progress towards the benchmark will result in more intensive OSEP intervention.

States falling into the unacceptable category will receive intensive OSEP intervention, including sanctions.

BENCHMARKS AND TRIGGERS FOR PART B PRIORITIES

Note: Failure to provide data results in automatic placement into Category 4 for the indicators being measured.

PRIORITY 1: EFFECTIVE STATE SUPERVISION—CHILD FIND

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 1: EFFECTIVE STATE SUPERVISION—DISPUTE RESOLUTION AND MONITORING

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 1: EFFECTIVE STATE SUPERVISION—PUBLIC INPUT

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 2: MEANINGFUL AND EFFECTIVE FAMILY INVOLVEMENT

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 3: DEVELOPMENT AND PERFORMANCE OF OUTCOMES FOR CHILDREN AND YOUTH WITH DISABILITIES

Indicators 1 and 2:

Note: Data currently are not available to set benchmarks and determine triggers for indicators 1 and 2.. However, the data from the biennial reports submitted by states will be able to be used for these purposes after the spring of 2002. The benchmark and triggers will likely be set by looking at the total participation rate in assessments, the participation rate in regular assessments, the participation rate in alternate assessments, and the discrepancy between general education and special education students.

Indicators 3 and 4:

Benchmark: No benchmark is being set at present because there is too much variability from state to state about what constitutes a diploma.

Trigger for Category 1: Whatever the benchmark is determined to be

Trigger for Category 2: States that do not fall into categories 1, 3, or 4.

Trigger for Category 3: Appearance on any two of the following lists:

a) Rank in the bottom 30% of states for graduation rate of students with disabilities

b) Rank in the top 30% of states for size of differential between graduation rate of special education and regular education students
c) Rank in the top 30% of states for dropout rate

Trigger for Category 4: Appearance on any two of the following lists:

a) Rank in the bottom 15% of states for graduation rate of students with disabilities
b) Rank in the top 15% of states for size of differential between graduate rate of special education and regular education students
c) Rank in the top 15% of states for dropout rate

Example:

Using these triggers, no states would be in Category 1 because a benchmark has not yet been defined.

Using these triggers, 32 states would be in Category 2:

Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Idaho
Illinois
Indiana
Kansas
Maine
Maryland
Massachusetts
Minnesota
Missouri
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Ohio
Oklahoma
Pennsylvania
Rhode Island
South Dakota
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin

Using these triggers, 12 states would be in Category 3:

Florida
Georgia
Hawaii
Iowa
Kentucky
Michigan
North Carolina
Oregon
Puerto Rico
South Carolina
Vermont
Wyoming

Using these triggers, 6 states would be in Category 4:

Alabama
District of Columbia
Louisiana
Mississippi
Nevada
Tennessee

PRIORITY 4: INCLUSION OF CHILDREN AND YOUTH WITH DISABILITIES IN TYPICAL COMMUNITY AND SCHOOL SETTINGS WITH THEIR NONDISABLED PEERS WITH NEEDED SUPPORTS

Benchmark: 90% of students with disabilities will be educated in general education classes for 80% or more of the school day.

Trigger for Category 1: 90% of students or more are educated in general education for more than 80% of the school day.

Trigger for Category 2: States that do not meet the triggers for categories 1, 3, or 4.

Trigger for Category 3: Appearance on one of the following lists:

a) Rank in the top 30% of states when measuring the percentage of students spending more than 60% of the school day outside of the regular classroom
b) Rank in the top 30% of states when measuring the percentage of students educated in public or private special education facilities

Trigger for Category 4: Appearance on any two of the following lists:

a) Rank in the bottom 20% of states when measuring the percentage of students spending less than 21% of the school day outside of the regular classroom
b) Rank in the top 20% of states when measuring the percentage of students spending more than 60% of the school day outside of the regular classroom
c) Rank in the top 20% of states when measuring the percentage of students educated in public or private separate school facilities.

Example:

Using these triggers, no states would be in Category 1.

Using these triggers, 36 states would be in Category 2:

Alabama
Alaska
Arizona
Arkansas
Colorado
Connecticut
Florida
Hawaii
Idaho
Indiana
Iowa
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
North Dakota
Ohio
Texas
Vermont
Washington
West Virginia
Wisconsin
Wyoming

Kansas
Kentucky
Maine
Massachusetts
Oklahoma
Oregon
South Dakota
Tennessee

Using these triggers, seven states would be in Category 3:

California
Michigan
New Jersey
Pennsylvania
Puerto Rico
Rhode Island
Utah

Using these triggers, nine states would be in Category 4:

Delaware
District of Columbia
Georgia
Illinois
Louisiana
Maryland
New York
South Carolina
Virginia

Note: This totals 52 because of the inclusion of Puerto Rico and the District of Columbia. The Bureau of Indian Affairs needs to be included but will be added in at a later time.

PRIORITY 5: EFFECTIVE TRANSITIONS FOR CHILDREN AND YOUTH WITH DISABILITIES—TRANSITION TO PRESCHOOL

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 5: EFFECTIVE TRANSITIONS FOR CHILDREN AND YOUTH WIH DISABILITIES—TRANSITION TO ADULT LIFE

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

PRIORITY 6: ENHANCED SOCIAL-EMOTIONAL AND ACADEMIC DEVELOPMENT OF CHILDREN AND YOUTH WITH DISABILITIES THROUGH THE USE OF POSITIVE BEHAVIOR SUPPORTS AND STRATEGIES AND IMPROVED SCHOOL CLIMATE

Benchmark:

Trigger for Category 1:

Trigger for Category 2:

Trigger for Category 3:

Trigger for Category 4:

SANCTIONS, TECHNICAL ASSISTANCE AND OTHER OSEP INTERVENTION, AND REWARDS

There is a rebuttable presumption that sanctions will be imposed when corrective actions are not completed and that intervention will occur when performance goals not met by the identified deadline. Imposition of sanctions will occur unless the state can rebut the presumption of sanctions/intervention by demonstrating:

a) that the corrective action will be successfully completed by a specific date not to exceed 90 days beyond the deadline;
b) exigent circumstances (natural disaster, extended illness of key personnel); or
c) that the corrective action will not be effective and the state has an alternative proposal with reasonable timelines.

Successful completion means that the state has made significant progress towards reaching the required goal. This is identified through data when possible.

All stakeholders, including the state interagency coordinating council, the special education advisory council, the steering committee, parents, and others, must have the opportunity to provide input and to review and help to shape corrective action plans and performance plans.

Sanctions and interventions shall be selected from a predetermined small group of equally coercive choices, based on which of the sanctions or interventions is likely to be the most effective. Rewards shall be provided to states when they meet or exceed the benchmarks.

The following list of technical assistance activities, interventions, sanctions, and rewards was developed by the stakeholder group.

[The categories of least coercive, moderately coercive, and most coercive were developed by the subgroup responsible for drafting the document embodying the entire process. Stakeholder group as a whole needs to agree on coerciveness rankings, based on level of effectiveness of each of these options.]

Technical assistance/intervention:

Provision of information by regional resource centers

OSEP approval of state improvement plan and guidance from OSEP as necessary, including expertise from the Research to Practice Division, and specific topics, targets, and timetables

Provision of timely information (e.g. response to queries from states) and technical assistance

Provision of technical assistance to states and local school systems, including through state technical assistance networks

Provision of technical assistance through NECTAS

Provision of technical assistance to low-performing states by high-performing states, perhaps through mentoring program

Publication of successful and effective practice on OSEP and other websites, IDEA practices websites, and partnership websites

Provision of technical assistance by OSEP Project Officer

Provision of training, technical assistance, and support within state technical assistance systems

Discussions with teacher education personnel and other higher education officials
Provision of new funding for initiatives such as state improvement grants and general supervision

Membership in SCASS for resource assistance

Provision of technical assistance by other agencies such as AT, PTIs, CRCs, ILCs, etc.

Provision of data management resources

Note: Technical assistance should be related to priority areas, needs, indicators, timelines, targeted areas, etc.

Sanctions:

Least coercive

Targeted resources to focus on capacity-building for low-performing states (State must assume role for areas such as budget authority)

Public notice: posting of state data publicly

Voluntary performance agreements with timelines

Directed fact-finding or data-gathering by state

Moderately coercive

Publication of state status through website, press releases, trade press, documents such as top 10 violators

Designate state as high-risk and apply special conditions

Written warning with threat of sanction

Compliance agreements with specific deadlines and verification (voluntary)

Issuance of cease and desist order

Issuance of conditions for approval of a state plan

Referral to the Office of Inspector General

Referral to the United States Department of Justice

Most coercive

Directing state officials on how to spend funds (IDEA and, if allowable, other federal funds)

Disapproval of a state plan

Partial or complete withholding of funds (IDEA and, if allowable, other federal funds)

Receivership (takeover of state's functions with respect to special education)

Note: Spanning all three levels of coerciveness is OSEP intervention that tells states what to fix and how to fix it in progressively more prescriptive terms.

Rewards:

Give states money to mentor others, develop stories about how they achieved success

Write to Governor of state, praising the accomplishments of the state education agency, and publicize

Give plaque to high-performing states or others for recognition

National press releases or other publicity

Highlight high-performing state accomplishments in Annual Report to Congress

Use the OSEP website for state commendations, like the Promising Practices website

Make a big deal for high-performing states—use banners such as the U.S. Department of Education Blue Ribbon Schools banners

Document in a step by step manner how the state achieved success

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name: Leslie Seid Margolis

1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee). Yes [✓ No]

2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999:

None

Note: I will be testifying in my personal capacity but I work for the Maryland protection and advocacy agency, which receives federal grants

3. Will you be representing an entity other than a government entity? Yes [✓ No]

4. Other than yourself, please list what entity or entities you will be representing:

None

5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4:

None

6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract:

None

7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: Yes [✓ No]

Signature: Leslie Seid Margolis Date: 4-30-02

Please attach this sheet to your written testimony.

APPENDIX G – SUBMITTED FOR THE RECORD, LETTER FROM LISA GRAHAM KEEGAN, ET. AL., CHIEF EXECUTIVE OFFICER, EDUCATION LEADERS COUNCIL, WASHINGTON, D.C., TO TERRY BRANSTAD, CHAIRMAN OF THE PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION, WASHINGTON, D.C., MAY 3, 2002

ELC Education Leaders Council

May 3, 2002

The Honorable Mike Castle
Chairman
Subcommittee on Education Reform
U.S. House Committee on Education & The Workforce
2175 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I am enclosing a letter that William Bennett, Chester E. Finn and I sent to the Honorable Terry Branstad, Chairman of the President's Commission on Excellence in Special Education, which we would like included in the record for the May 2, 2002 hearing you chaired on special education.

In our letter, we outline five key issues that will need to be addressed in concert to help IDEA live up to the promise of its principles – principles we believe have lay at the heart of IDEA since its enactment nearly thirty years ago.

I will let the letter speak for itself, but in summary, the five key issues are:

- Academic Achievement – Changes to IDEA need to build upon the *No Child Left Behind Act* so that states have a continued incentive to make sure that their special education students succeed academically. The focus of special education has for too long been about process, not education.

- Identification -- The incentive for identifying students for special education should be based on a need to improve access for students who need real accommodation to achieve at the same level as their peers, not on a desire to gain special privileges for students who do not truly need them.

- Funding: Full funding would not solve the problems surrounding special education. Nor do we believe making the federal contribution an entitlement would make the program itself any more accountable or effective.

- Discipline -- Previous efforts to clarify when and how special education students may be disciplined have only served to make the law more confusing. The system needs to be fair to the teacher, the special education student, and all other students in the classroom and school. It needs a single discipline standard. Youngsters who cannot meet that standard need to do their learning in other classrooms or schools.

- Choice for Families -- As part of the effort to make IDEA a performance-based program, parents need to be given options -- similar to those provided under the Florida Scholarship Program for Students with Disabilities. The student-centered thrust of the Florida program is the key to its success for special needs students and their families. Schools are held accountable for individual performance, and families are empowered to make decisions about the education services their children receive.

I appreciate your allowing Mr. Bennett, Mr. Finn and myself to submit this letter to you for the record. Please do not hesitate to contact any of us if you have further questions. We appreciate all the work you and your staff are doing, and are always available to you and your members.

Sincerely,

Lisa Graham Keegan
Chief Executive Officer, ELC

[illegible]

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ELC, Empower America, and Fordham Foundation Letter to the President's Commission on Excellence in Special Education

The following letter was delivered to Terry Branstad, chairman of the Commission, before its February 25 meeting in Houston:

February 20, 2002
The Honorable Terry E. Branstad
Chairman
President's Commission on Excellence in Special Education
80 F Street NW, Suite 408
Washington, DC 20208

Dear Chairman Branstad:

As you and your fellow members of the President's Commission on Excellence in Special Education continue the critical task of examining our nation's special education laws and policies, we want to provide you with a respite from the hyperbolic oratory you are likely hearing, and offer an alternate point of view that we hope represents a needed dose of common sense.

This is a commonsense plea for the Commission to consider serious reform of the quarter-century old IDEA program. We are confident that there is significant support across America for IDEA reform, and that this support comes from many sectors, including those most directly affected, America's disabled children and their families. But the Commission may find itself surrounded by those who would block out that message. We want to make sure that it gets through.

At each meeting of the commission, you are implored at every turn, "SAVE IDEA." And

IDEA does need saving—but not in the way that many might be telling you. One does not "save" IDEA by keeping the rules the same and adding more money any more than one saves a drowning man by adding more water to the pool. Instead, you throw him a line, pull him in, and teach him to swim. That's what special education needs right now. IDEA is indisputably built on good intentions and it has accomplished much good in providing millions of disabled children with access to a free and appropriate education. Disabled children who would have been denied access to public schools 35 years ago are now entering schools and classrooms and learning alongside their peers. The issue is no longer about access to education, but rather about the quality of the education that is provided to these students, and how much they actually learn.

Our nation's special education law contains many important issues that your commission—and the Administration and Congress—should address. This letter outlines just five that we believe are especially urgent. They are also interconnected and must be dealt with in concert if America is to achieve meaningful reform of special education.

Funding: Discretionary is the Better Part of Valor

As you well know, IDEA contains one of the federal government's greatest unfunded mandates, certainly the most burdensome in K–12 education. When the program was first enacted in 1975 (as the Education for All Handicapped Children Act), the law mandated that the federal government would pay 40% of the state's costs for educating disabled students. The idea in 1975 was to increase appropriations for IDEA annually, with the 40% mandate to be reached by 1982. Then it would only be a matter of keeping pace with inflation.

Obviously, this goal has not been attained. Federal funding has never reached 20 percent, much less 40. The commission may, however, want to acquaint itself with the arbitrariness of the 40 percent target: as far as we can tell, Congress arbitrarily plucked a figure from the air. It's also important to ask, "forty percent of what?" The figure against which the 40 percent is applied is not the cost of special education; it's simply the cost of "regular" education. That is, when this formula was devised, Congress somehow made the assumption that the cost of educating a disabled child is precisely twice the cost of educating a child in "regular" education, and that the federal government should pay 40% of that differential.

The 40 percent figure associated with full funding" of IDEA is, in short, based on an arbitrary and irrational set of assumptions. Moreover, meeting it today would cost about $18 billion in FY2003. This increase alone equals more than the federal government presently spends on the Title I program for disadvantaged students.

The "unfunded mandate" argument is the wrong one to base policy on. Even if the government were somehow able to add $18 billion to next year's appropriation for IDEA, it would not solve the problems surrounding special education. Nor do we believe making the federal contribution an entitlement would make the program itself any more accountable or effective. If we are serious about making IDEA work for children, we need to be able to monitor its effectiveness through the appropriations process (among other accountability mechanisms), rather than allowing it to automatically continue to sop up funds. Once a program earns entitlement status—effectively putting its funding on auto-pilot—it is nearly impossible to use the power of the purse as leverage for improving program performance.

Money is one of the most powerful tools the government has to reward success and innovation and to discourage failure and stagnation. Creating an entitlement program also tends to create an entitlement mentality within the program itself. That may be okay when the program is succeeding in attaining its objectives. When it is not, however, entitlement-thinking is apt to make the program complacent rather than reform-minded.

As a recent exposé in the Washington Post reminds us, there's an awful lot of money in the current special education system and a lamentable number of people looking to get some of it for themselves. That unscrupulous attorneys in the nation's capital could improperly pocket millions of special education dollars because of a whole series of system failures, missing financial controls, and sheer incompetence attests to the program's need for reform before more money is placed upon the table.

Identification: The Too-Many-Cooks Syndrome

Since its inception, the number of students being served by the program has increased about 65%: from 3.7 million in 1976 to 6.125 million in 2000. This increase would be encouraging if it meant that more of our most disabled children were entering public schools each year. Unfortunately, it doesn't mean that at all.

Instead, what it means is that millions of children with "specific learning disabilities" are being added to the program. Today, in fact, that somewhat nebulous set of categories accounts for about half of all youngsters in special education.

The problem is no one is very clear just what is meant by a "specific learning disability" or whether special education is the best way to deal with a child who may have such a disability. Far from being a program targeted at a special population, IDEA has now become almost too inclusive. Rather than serving as the primary mechanism by which disabled students are ensured both access to and equal opportunities in public education, IDEA has become a convenient place to send troublesome students and those who have not learned to read—often because they were not properly taught to read when they were very young.

Even more troubling is the creeping tendency of parents to view special education as a mechanism that can be wielded to profit children who truly do not need special accommodations. We are alarmed by the number of parents who are rushing to have their children labeled as disabled simply to get them more time to take standardized tests like the SAT, or free access to note-taking services or substitute curricula. As with the greedy practices of the unscrupulous attorneys, these, too, are abuses that tarnish the program.

It's good that special education no longer brings a stigma, but it should not be considered a laurel wreath, either. The incentive for identifying students for special education should be based on a need to improve access for students who need real accommodation to achieve at the same level as their peers, not on a desire to gain special privileges for students who do not truly need them.

Discipline Problems

Discipline remains one of the most divisive and contentious issues in the special education debate. Unfortunately, previous efforts to clarify when and how special education students may be disciplined have only served to make it more confusing.

The first right of any student or teacher in America's public schools must be the right to study in a safe atmosphere that is conducive to learning. It is unacceptable to allow any child to disrupt the education of many children. This is not only bad for educational achievement, but it also signals a double standard that teaches children a bad moral lesson.

We do not believe assertions by and from special education advocates that allowing teachers to appropriately discipline special education students will lead to multitudes of disabled youngsters being banished from classrooms and schools. But the system needs to be fair to the teacher, the special education student, and all other students in the classroom and school. It needs a single discipline standard. Youngsters who cannot meet that standard need to do their learning in other classrooms or schools.

The "stay put" provision in IDEA often has the unintended effect of tying the hands of educators who are trying to create orderly learning environments in their classrooms. This provision, coupled with the requirement of determining whether misbehavior is a manifestation of a child's disability, has frustrated even the most patient, well-meaning teachers, administrators and policymakers.

Teachers need the authority to discipline problem students without fear of being hauled before a judge—or, worse yet, before someone is severely hurt by a student who is simply "manifesting" a disability.

Make Special Education a True Education, Not Just a Process

For too long, IDEA has been more about compliance with myriad procedural requirements than about teaching children. State success in complying with IDEA is presently based on whether they provide assessments, hold timely IEP meetings, provide procedural safeguards and draw down funds in an appropriate manner—but nowhere in the statute is a state asked to ensure that these children succeed academically. Claims that the 1997 amendments solved this problem are false. What happened in 1997 was that Congress placed a veneer of "academic standards" atop an unchanged edifice of compliance. Today, as always in the history of this program, the compliance part is what's enforced, not the standards part.

As a new Abell Foundation study of Baltimore concludes, that city's special-education program "is still squandering too much time, attention and money on excessive paperwork and bureaucracy at the expense of better instruction. Special education students are not coming close to achieving their academic potential."

This is not only a disaster for the children directly affected. It also means that special education is out of sync with the recently enacted No Child Left Behind Act (NCLB), which mandates standards-based reform for all children. One of its requirements is that all students, including special-needs children, be tested as part of a state's academic assessment system. States must also their disaggregate testing results to ensure that every subpopulation is making adequate yearly progress. The inclusion of special education students in this testing requirement is a positive step in ensuring that schools will be held accountable for truly educating this critical subpopulation, not just providing disabled youngsters with "access."

Changes to IDEA need to build upon the NCLB foundation so that states have a continued incentive to make sure that their special education students succeed academically. States may, for example, choose to base funding a district or school not only on the number of eligible students, but also on the number of these students who meet the goals of their IEP and make progress on state academic standards. They could also tie funding to performance, rewarding schools that make progress and sanctioning those that don't—or let special needs students carry their funding with them to another provider altogether. That would make IDEA similar to the supplemental services provision of NCLB and to an existing program in Florida.

It would also mean that disabled youngsters from low-income families would gain the ability to attend the school of their choice—an option that today benefits primarily disabled youngsters from upper-middle class families who are able to retain attorneys.

A Study in Progressive Policy: Florida's Scholarship for Students with Disabilities

> As part of a performance-based IDEA, we encourage the commission to look closely at Florida's Scholarship Program for Students with Disabilities. Under this arrangement, disabled youngsters who are not making academic progress in their school may use a voucher equal to the amount of their state and federal special education funding, and use it pay for services from the provider of their choice, including private providers. "Progress" for each student is based on the child's IEP.
>
> Under the Florida system, a special education student who is not making academic progress may transfer to another school or provider, even if their present school is an otherwise successful one.
>
> Further, private schools under this system cannot "cream" special education students, taking those who show the greatest promise while refusing others. If a private provider opts to take special education students and the funding that comes with them, they must take any who present themselves. For the 2000-2001 school year, 105 private schools in 36 of Florida's 67 school districts indicated they would participate in the program. The list continues to grow rapidly as word spreads that this opportunity is available for families that prefer it.
>
> The student-centered thrust of the Florida program is the key to its success for special needs students and their families. Schools are held accountable for individual performance, and families are empowered to make decisions about the education services their children receive.

Access, achievement, and accountability. We believe these three principles, in concert, reflect the original intent of IDEA.

We appreciate the difficulty of the task before you, and fully understand that this debate will be taking place in an atmosphere of heightened rhetoric. Many will try to persuade the commission that it will do irreparable harm to IDEA if it recommends any changes other than increased funding. Others may argue that changes to IDEA are an affront to the ideals embodied in the Act, and that advocating reforms in the program means a lack of commitment to disabled children.

We know better. We believe that access to education and educational progress must be the driving factors behind gauging the success of IDEA. We are urging reforms in IDEA because we honestly believe that, properly revised, IDEA can live up the promise of its principles.

We look forward to working with you and the commission as you continue this important debate. We are grateful for the opportunity to provide you with another point of view. We are also available upon your request to answer questions or to testify before the commission.

Thank you again for your dedication to this critical issue.

Sincerely,

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APPENDIX H –INCLUDED IN THE PERMANENT ARCHIVE FILE, RETHINKING SPECIAL EDUCATION FOR A NEW CENTURY, EDITED BY CHESTER E. FINN, JR., ET. AL., PUBLISHED BY THE THOMAS B. FORDHAM FOUNDATION AND THE PROGRESSIVE POLICY INSTITUTE, WASHINGTON, D.C., MAY 2001

APPENDIX I – INCLUDED IN THE PERMANENT ARCHIVE FILE, FAIRFAX COUNTY PUBLIC SCHOOL, FAIRFAX, VA, SAMPLE FORMS AND DOCUMENTS: (1) NOTIFICATION TO PARENTS PRIOR TO MEETING FOR INITIAL REFERRAL, (2) DOCUMENTS TO FIND A CHILD ELIGIBLE FOR SPECIAL EDUCATION, (3) DOCUMENTS COMPLETED AT LOCAL SCREENING MEETING AND GIVEN TO PARENTS, (4) DOCUMENTS COMPLETED AT IEP MEETING, (5) SAMPLE IEP

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